

**ORIGINAL**

**FILED  
SUPREME COURT  
STATE OF OKLAHOMA**

**OCT 16 2013**

**MICHAEL S. RICHIE  
CLERK OF  
THE APPELLATE COURTS**

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

KEN YAZEL, Tulsa County Assessor, )  
Petitioner/Appellant, )

vs. )

Supreme Court No.: SD-111502

companion case: SD-111643

THE WILLIAM K. WARREN MEDICAL )  
RESEARCH CENTER, INC. an )  
Oklahoma Not-For-Profit Corporation; )  
MONTEREAU, INC., an Oklahoma )  
Not-for-Profit Corporation, )  
Respondents/Appellees. )

Received: 10-16-13  
Docketed:   
Marshal:   
COA/OKC:   
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**APPELLANT'S PETITION FOR WRIT OF CERTIORARI**

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Appeal from Order Granting Motion for Summary Judgment  
District Court of Tulsa County, Oklahoma  
Case No. CV-2012-825  
The Honorable Judge E. Mark Barcus, Trial Judge

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**RECEIVED**

**OCT 16 2013**

**CLERK'S OFFICE**

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

KEN YAZEL, Tulsa County Assessor,            )  
                                                                  )  
                                                                  )  
vs.                                                            ) Supreme Court No.: SD-111502  
                                                                  )  
                                                                  )                    companion case: SD-111643  
                                                                  )  
THE WILLIAM K. WARREN MEDICAL            )  
RESEARCH CENTER, INC. an                    )  
Oklahoma Not-For-Profit Corporation;    )  
MONTEREAU, INC., an Oklahoma            )  
Not-for-Profit Corporation,                 )  
                                                                  ) Respondents/Appellees.    )

PETITION FOR WRIT OF CERTIORARI

Pursuant to Title 20 O.S. §30 and Title 12 O.S. §1.178, Appellant, Ken Yazel, Tulsa County Assessor, (“Assessor”) respectfully petitions this Honorable Court to issue a Writ of Certiorari to review the “For Publication” Opinion of the Oklahoma Court of Civil Appeals, Division IV (“COCA”), filed on the 26<sup>th</sup> day of September, 2013, dismissing the appeal filed by Assessor in the above-entitled cause, as well as in the companion case: SD-111643<sup>1</sup>. Assessor asks that this Court, upon review of the COCA’s Opinion, vacate the COCA’s order of dismissal and withdraw Opinion from publication. In support of this Petition and in compliance with Title 12 O.S. §1.178, Assessor states:

1. Date of decision sought to be reviewed:

Assessor seeks review of the COCA’s Opinion filed on September 26, 2013. A copy of the Opinion is attached in the Appendix.

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<sup>1</sup> *Yazel v. William K. Warren Medical Research Center, Inc., Montereau, Inc, et al.* A declaratory judgment action asking the appellate court to find that Title 68 O.S. §2887(8)(b) is unconstitutional.

2. Reasons for review:

This Court should grant certiorari to review the Opinion, because the COCA has decided a question of substance not previously determined by the Supreme Court of Oklahoma, a question regarding a county assessor's ability to exercise his statutory right to be represented by his general counsel, specifically:

The COCA has decided that the statutory authority given to a general counsel hired by an assessor, pursuant to Title 19 O.S. §527<sup>2</sup>, to represent the assessor and his office in the performance of the official duties of his office, does not include having the authority to represent the assessor in an appeal of a decision from a county board of equalization filed pursuant to Title 68 O.S. §2880.1.<sup>3</sup>

The COCA, in deciding that the assessor's general counsel is not authorized to bring an appeal on behalf of his client, has now created an additional duty for the General Counsel of the Oklahoma Tax Commission which would require that the Tax Commission's General Counsel "coordinate and choose" which appeals (from a board of equalization) any of the

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<sup>2</sup> 19 O.S. §527: The sheriff, treasurer or assessor in a county shall have the authority to employ a general counsel, either in-house as a staff attorney or through an outside law firm, to advise or represent that officer and his or her office in the performance of the official duties of that office. The Board of County Commissioners shall approve all contracts for outside counsel. A general counsel employed pursuant to this section shall be compensated from the funds of the employing county office.

<sup>3</sup> 68 O.S. §2880.1, provides in part:

A. "... both the taxpayer and the county assessor shall have the right of appeal from any order of the county board of equalization to the district court of the same county, and right of appeal of either may be either upon questions of law or fact including value, or upon both questions of law and fact."

...

D. "... in such appeals to the district court and to the Supreme Court and in requests for declaratory judgment, it shall be the duty of the district attorney to appear for and represent the county assessor. The General Counsel or an attorney for the Tax Commission may appear in such appeals or requests for declaratory judgment on behalf of the county assessor, either upon request of the district attorney for assistance, or upon request of the county assessor."

county assessors in Oklahoma should be allowed to file. A duty not currently imposed on the Tax Commission's General Counsel by statute or administrative rule.

3. Factual Background:

- a. For the 2012 tax year, Assessor valued and assessed a portion of Appellees' property pursuant to Title 68 O.S. §§2818(B) and 2887(8)(b).
- b. On May 27, 2012, Appellees appealed the Assessor's decision to the Tulsa County Board of Equalization ("BOE") pursuant to Title 68 O.S. §2876(F).
- c. On June 20, 2012, the BOE cancelled the assessment of Appellees' property by the authority given to them under Title 68 O.S. §2863.
- d. On July 6, 2012, pursuant to communications between Assessor's General Counsel and Tulsa County Assistant District Attorney Doug Wilson, Assessor provided written notification to the Tulsa County District Attorney's Office of his intent to use his General Counsel to represent him pursuant to Title 19 O.S. §527, to appeal the BOE's decision and to file a declaratory judgment action. Assessor's General Counsel was told by Mr. Wilson, that upon the receipt of the notification, the District Attorney's office would "stand down".
- e. On July 9, 2012, Assessor's General Counsel, filed this cause of action in the Tulsa County Court Clerk's office pursuant to Title 68 O.S. §2880.1, appealing the order of the Tulsa County Board of Equalization that cancelled Assessor's valuation of Appellees' property for the 2012 tax year.<sup>4</sup>
- f. On July 17, 2012, in response to a letter from Appellees' counsel, Joel Wohlgemuth, questioning the authority of Assessor's general counsel to bring an appeal from the

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<sup>4</sup> On the same day, Assessor filed a declaratory judgment (SD-111643) a companion case to the one before this Court.

BOE, and *asking for the District Attorney's office position* on the matter, Tulsa County Assistant District Attorney, John David Luton, Chief of the Civil Division, stated in a letter that:

“The Legislature recently amended 19 O.S. §527 to authorize the county assessor to employ general counsel to advise or represent him in the performance of his official duties. Mr. Yazel advised our office on July 6, 2012, that he intended to exercise his rights under the aforementioned statute to have his general counsel, Leisa Weintraub, represent him in the above-referenced matter.”

Assistant District Attorney Luton in his letter to Appellees' counsel clearly acknowledges that Assessor has the authority to choose to be represented by his general counsel in appeals from the board of equalization. Of importance is that Mr. Luton did not take the position that the district attorney's office had an objection Assessor filing an appeal by and through his General Counsel, Leisa Weintraub.

- g. On January 28, 2013, the Honorable Judge E. Mark Barcus sustained Appellees' Motion for Summary Judgment.<sup>5</sup>
- h. On February 22, 2013, Assessor's General Counsel filed a Petition in Error pursuant to Oklahoma Supreme Court Rule 1.36 and Title 68 O.S. §2880.1, and by the authority granted in Title 19 O.S. §527.<sup>6</sup>
- i. On July 1, 2013, the COCA issued a Show Cause Order to Assessor, demanding that Assessor show cause as to why the appeal(s) should not be dismissed for violation of Title 68 O.S. §2880.1(D).

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<sup>5</sup> The Honorable Linda G. Morrissey sustained each Appellees' Motion for Summary Judgment in the declaratory judgment case; companion case: SD-111643.

<sup>6</sup> A Petition in Error was filed in SD-111643 on April 4, 2013.

4. Argument Amplifying Reasons Certiorari Must Be Granted:

The COCA's order dismissing Assessor's appeal on the basis that the appeal was unlawfully brought by Assessor's General Counsel, is based on an untenable premise, one that if allowed, would prohibit a county assessor from exercising his statutory authority to be represented by his general counsel in the performance of the official duties of his office. Title 19 O.S. §527 provides that a county assessor (as well as a county sheriff and county treasurer) **shall have the authority** to employ a general counsel, either in-house as a staff attorney, or through an outside law firm, **to advise or represent that officer and his office in the performance of the official duties of that office.** Inexplicably, the COCA refuses to acknowledge the unrestricted authority bestowed upon county assessors by the Oklahoma Legislature to be represented by their general counsel to provide them with legal representation in the performance of their official duties. Instead, the COCA finds that the phrase in 68 O.S. §2880.1(D) which provides that "it shall be the duty of the district attorney to appear for and represent the county assessor" prohibits an assessor from being represented by his general counsel, counsel that he has the authority to hire to represent him in the performance of his official duties. An assessor's official duties are: to "assess and value all property, both real and personal, which is subject to assessment by him and shall place a separate value on the land and improvements in assessing real estate; and he shall do all things necessary, including the viewing and inspecting of property, to enable him to assess and value all taxable property ... and determine the taxable status of any property which is claimed to be exempt from ad valorem taxation for any reason."<sup>7</sup> In furtherance of his official duties and the duties of his office, an assessor shall have "the right of appeal from any order of the county board of equalization to the district court of the same

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<sup>7</sup> Title 68 O.S. 2818(B)

county, and (this) right of appeal (of both the taxpayer or assessor) may be either upon *questions of law or fact including value*, or upon both questions of law and fact”;<sup>8</sup> and in such appeals taken by the county assessor “the presumption shall exist *in favor or the correctness of the county assessor’s valuation* and the procedure followed by the county assessor”<sup>9</sup> Clearly, Assessor’s general counsel has the authority to represent the assessor in the performance of his official duties, which includes, but is not limited to appealing an order of a county board of equalization.

Much like Title 68 O.S. §2880.1(D), Title 19 O.S. §§215.4<sup>10</sup>, 215.5<sup>11</sup>, 215.25<sup>12</sup>, and 215.37M<sup>13</sup> provide that a district attorney has the “duty” to advise and represent counties, county officers, and county employees. However, the Legislature has determined that, if the district attorney and board of county commissioners agree, this “duty” of the district attorney “*shall be fulfilled*” if legal representation is provided by a private attorney. In Section 215.37M, the Legislature requires that the board of county commissioners to pay for the private attorney’s legal representation out of the county’s general operation (or other) account. The aforementioned sections of law that state that it is the “duty” of the district attorney to advise and represent county officers, are modified by Title 19 O.S. §527, at least as it pertains to certain

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<sup>8</sup> Title 68 O.S. §2880.1(A)

<sup>9</sup> Title 68 O.S. §2880.1(E)

<sup>10</sup> Title 19 O.S. §215.4 provides in part: “...the district attorney or assistant district attorneys *shall prosecute or defend* in all courts, state and federal, in any county in this state, all civil actions or proceedings in which any county in the district is interested, or a party *unless representation for the county is provided pursuant to subsection A of Section 215.37M of this title.*”

<sup>11</sup> Title 19 O.S. §215.5 provides: “The district attorney or his assistants *shall give opinion and advice* to the board of county commissioners and other civil officers of his counties when requested by such officers and boards, upon all matters in which any of the counties of his district are interested, or relating to the duties of such boards or officers in which the state or counties may have an interest.”

<sup>12</sup> Title 19 O.S. §215.25 provides in part: “G. The district attorney’s duty to represent county officers and employees pursuant to this section *shall be fulfilled* if a contract for such representation is entered into pursuant to subsection B of Section 215.37M of this title.”

<sup>13</sup> Title 19 O.S. §215.37M provides in part: “B. If the district attorney and the board of county commissioners of any county agree, *legal representation in any civil case in which a county officer or employee is a party and the district attorney is required* to represent the county pursuant to Section 215.25 of this title *may be provided by contract with a private attorney*. The costs of such contract shall be paid by the board of county commissioners out of its account for general government operation, or other account, as may be appropriate.”

county officers: sheriffs, assessors, and treasurers, because these specific county officers have been given specific authority to hire their own general counsel to represent and advise them, that is, to fulfill the duties of the district attorney. Tellingly, when authorizing certain county officers to hire general counsel in §527, the Legislature removed the district attorney from the equation completely by *mandating* that the board of county commissioners “**shall approve all contracts for outside counsel**” - there is no requirement that the board of county commissioners and the district attorney agree prior to approving contracts for outside counsel for these specific county officers. In acknowledgement that these county officers have the unrestricted authority to choose their own general counsel, the Legislature requires each county officer to be responsible for the compensation of his general counsel (either in-house as a staff attorney or an outside law firm) by paying for the general counsel out of officer’s funds. It is clear from Title 19 §§215.25, 215.37M, and 527, that the duty of the district attorney to represent county officers is not an absolute; this duty can be “fulfilled” by the representation of a county officer by counsel from outside the district attorney’s office. In each of the aforementioned statutes, it is obvious that the Legislature has taken great steps to ensure that all county officers have legal representation, whether the representation is provided by the district attorney, a private attorney, or a county officer’s general counsel (in-house or in a private law firm). Because of the choices provided for in law, assessors have the right to decide who will represent them in an appeal from an order of the county board of equalization, whether the representation is provided by the district attorney, the General Counsel from the Oklahoma Tax Commission<sup>14</sup>, the assessor’s general counsel (either in-house or an outside law firm). The COCA is now, undeniably, restricting an assessor’s ability to exercise this right; in fact, the COCA has determined that instead of allowing the

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<sup>14</sup> 68 O.S. §2880.1(D) “. . . The General Counsel or an attorney for the Tax Commission may appear in such appeals or requests for declaratory judgment on behalf of the county assessor, either upon request of the district attorney for assistance, or upon request of the county assessor.”



seventy-seven assessors in Oklahoma to exercise this right of appeal through their own attorney, the General Counsel of the Oklahoma Tax Commission should control what appeals are to be taken from the seventy-seven county boards of equalization.

Section 2880.1(A) unequivocally states that a *taxpayer* **and** an *assessor* **shall** have the right of appeal from any order of the county board of equalization. In addition, an assessor shall have the right to request a declaratory judgment be rendered by a district court.<sup>15</sup> Both, the taxpayer and assessor shall have the right to appeal the decision of the board of equalization to the district court and to the Supreme Court.<sup>16</sup> In the Dismissal order issued on September 26, 2013, and released for publication, the COCA has now put the General Counsel of the Tax Commission in the position of being a **coordinator** for all appeals that *the General Counsel will allow* to be filed under §2880.1.<sup>17</sup> These additional duties that the COCA has decided to impose on the General Counsel of the Oklahoma Tax Commission are not provided for in law. In addition to giving additional duties to the General Counsel for the Oklahoma Tax Commission, the COCA would have a district attorney provide “a first level of objective, independent review” to determine whether an assessor can appeal an order of the board of equalization.<sup>18</sup> The COCA’s rationale is that by using this newly-created screening process, “certainty, stability, uniformity, and predictability of public tax policy is promoted and maintained, thus contributing to the economic development of this State.” It is apparent that the COCA has not considered or may not realize that when a **taxpayer** appeals an order from the board of equalization pursuant to Title 68 O.S. §2880.1(A), the appeal is to the district court and to the appellate courts, just like an appeal taken by an assessor, where tax policies can be created or amended. These appeals

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<sup>15</sup> 68 O.S. §2880.1(A)

<sup>16</sup> 68 O.S. §2880.1(C)

<sup>17</sup> Dismissal order, ¶14: “By requiring the General Counsel of the Tax Commission to coordinate and choose those cases which should be appealed and which should not, ...” and “In this connection, the district attorney can in turn confer with the Tax Commissions to coordinate appellate activity on a state-wide basis.”

<sup>18</sup> Dismissal order, ¶14.

filed by taxpayers in district court are against the assessor and/or board of equalization as the defendant/respondent. As Assessor represented to the COCA in his *Response* to the Court of Civil Appeals Show Cause Order, Assessor's General Counsel has defended Assessor in more than 70 cases, the majority of which were appeals from the BOE filed by taxpayers of Tulsa County.<sup>19</sup> In the Opinion rendered by the COCA, it would appear that it wants the General Counsel of the Oklahoma Tax Commission to also be held responsible for monitoring cases that are filed by taxpayers.

Finally, in their order of dismissal, the COCA has intentionally disregarded that Assessor was in communication with the Tulsa County District Attorney's office prior to the filing of the appeal from the BOE. Assessor was told that the District Attorney's Office would "stand down" upon receipt of written notification that Assessor would be exercising his right to be represented by his general counsel as provided for in §527. The District Attorney's Office did not object to Assessor's decision to be represented by his general counsel. Furthermore, in Assistant District Attorney Luton's response to Appellees' counsel, he confirmed that the Assessor was exercising his right to be represented by his in-house general counsel in an appeal from the BOE pursuant to §527. In fact, in looking at the COCA's new screening procedure for appeals taken from a county board of equalization, one could argue that Assessor went through and passed the "first level of scrutiny" to be provided by a district attorney.

It is important to note that the COCA's interpretation limiting the scope of Title 19 O.S. §527, as to what "performance of official duties" entails, can have an unintended and adverse impact on the statutory authority given to general counsel hired, not only by assessors, but also by county sheriffs and county treasurers to advise or represent the officers in the performance of

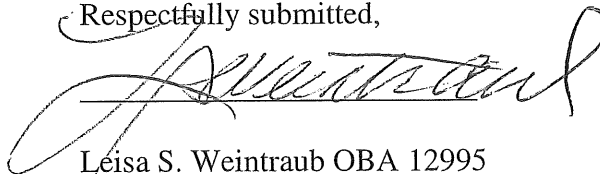
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<sup>19</sup> In fact, on October 10, 2013, Assessor received a *Show Cause Order* from the COCA in an appeal that was filed by a taxpayer, appealing an order of the Tulsa County Board of Equalization. Assessor appealed the judgment of the District Court on June 29, 2012. (Case No. 110,830)

their official duties. Therefore, due to the overreaching impact of the COCA's Opinion, which has been released for publication, Assessor respectfully asks that in addition to granting certiorari, that this Court order that the COCA's decision be withdrawn from publication.

Wherefore, premises considered, Appellant/Plaintiff, Ken Yazel, Tulsa County Assessor, prays this Honorable Court to grant this Petition for a Writ of Certiorari.

Respectfully submitted,



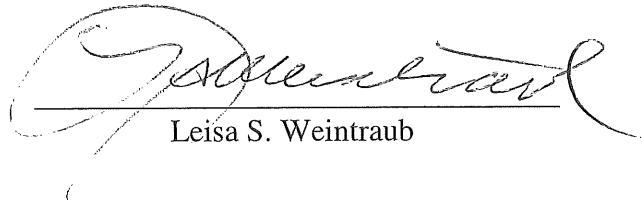
Leisa S. Weintraub OBA 12995  
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CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the Petition for Writ of Certiorari was mailed this  
16 day of October, 2013 to:

Joel L. Wohlgemuth  
David R. Ross  
Norman Wohlgemuth Chandler & Jeter  
401 S. Boston Avenue  
2900 Mid-Continent Tower  
Tulsa, Oklahoma 74103-4023

by depositing it in the U.S. Mails, postage prepaid.



Leisa S. Weintraub

**APPENDIX TO PETITION FOR CERTIORARI**

Opinion of the Court of Civil Appeals of the State of Oklahoma, Division IV,  
Filed on September 26, 2013

THIS OPINION HAS BEEN RELEASED FOR PUBLICATION BY ORDER OF  
THE COURT OF CIVIL APPEALS

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION IV

**FILED**  
COURT OF CIVIL APPEALS  
STATE OF OKLAHOMA

SEP 26 2013

**MICHAEL S. RICHIE**  
**CLERK**

KEN YAZEL, TULSA COUNTY )  
ASSESSOR, )  
)  
Plaintiff/Appellant, )  
)  
vs. )  
)  
THE WILLIAM K. WARREN )  
MEDICAL RESEARCH CENTER, )  
INC., an Oklahoma Not-For-Profit )  
Corporation; and MONTEREAU, INC., )  
an Oklahoma Not-For-Profit )  
Corporation, )  
)  
Defendants/Appellees. )

Case No. 111,502  
(Companion with  
Case No. 111,643)

APPEAL FROM THE DISTRICT COURT OF  
TULSA COUNTY, OKLAHOMA

HONORABLE E. MARK BARCUS, TRIAL JUDGE

**DISMISSED**

Leisa S. Weintraub  
GENERAL COUNSEL  
TULSA COUNTY ASSESSOR'S OFFICE  
Tulsa, Oklahoma

For Plaintiff/Appellant

Joel L. Wohlgemuth  
David R. Ross  
NORMAN WOHLGEMUTH  
CHANDLER & JETER  
Tulsa, Oklahoma

For Defendants/Appellees

OPINION BY JERRY L. GOODMAN, JUDGE:

¶1 Tulsa County Assessor Ken Yazel (Assessor) appeals the trial court's January 28, 2013, order granting judgment to Appellees, The William K. Warren Medical Research Center, Inc., and Montereau, Inc. Appellees object to Assessor's appeal because they contend it is brought in violation of state law. We agree with Appellees that this appeal has been improperly filed in violation of the statute governing such appeals and is therefore dismissed.<sup>1</sup>

**BACKGROUND**

¶2 Assessor levied ad valorem taxes on portions of property owned by Appellees, both tax-exempt IRS Section 503(c) entities. Appellees appealed to the Board of Equalization on the grounds that the assessment was contrary to exemptions provided them by law. The Board granted their request to vacate Assessor's levy. Assessor appealed to the district court, which affirmed the Board's decision. Assessor now appeals to this Court.

¶3 Appellees have objected to this appeal, alleging Assessor's appeal is brought in violation of 68 O.S.2011, § 2880.1(D), which mandates that either the district attorney or the Tax Commission represent Assessor in all appeals to the courts of

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<sup>1</sup>This is the companion case to Appeal No. 111,643, styled *Ken Yazel, Tulsa County Assessor v. The William K. Warren Medical Research Center, Inc.*, an Oklahoma not-for-profit Corporation; *Montereau, Inc.*, an Oklahoma not-nor-profit corporation; *Tulsa Jewish Community Retirement And Health Care Center, Inc.*, an Oklahoma not-nor-profit Corporation; and *Baptist Village Retirement Communities Of Oklahoma, Inc.*, an Oklahoma not-nor-profit Corporation, d/b/a Baptist Village Of Owasso, which is likewise dismissed in a separate opinion issued this date.

this state, neither of whom have entered an appearance. This Court, in an order filed June 17, 2013, requested Assessor to show cause why this appeal should not be dismissed as being in violation of § 2880.1(D). Assessor responded on July 1, 2013. Appellees in turn replied in a pleading filed on July 12, 2013. This single issue is now before this Court for decision.

### STANDARD OF REVIEW

¶4 Statutory interpretation is a question of law which is subject to a *de novo* standard of review. *State ex rel. Okla. State Dept. of Health v. Robertson*, 2006 OK 99, ¶ 5, 152 P.3d 875, 877; *Fulsom v. Fulsom*, 2003 OK 96, ¶ 2, 81 P.3d 652, 654.

### ANALYSIS

#### *I. The Statute in Question*

¶5 The statute in question, § 2880.1(D), was enacted in 1989 and is part of the Ad Valorem Tax Code, 68 O.S.2011, §§ 2801 through 2899. Section 2880.1 states:

A. Both the taxpayer and the county assessor shall have the right of appeal from any order of the county board of equalization to the district court of the same county, and right of appeal of either may be either upon questions of law or fact including value, or upon both questions of law and fact. In case of appeal the trial in the district court shall be *de novo*. Provided, the county assessor shall not be permitted to appeal an order of the county board of equalization upon a question of the constitutionality of a law upon which the board based its order, but the county



assessor is hereby authorized in such instance to request a declaratory judgment to be rendered by the district court.

B. Notice of appeal shall be filed with the county clerk as secretary of the county board of equalization, which appeal shall be filed in the district court within ten (10) days after the final adjournment of the board. It shall be the duty of the county clerk to preserve all complaints and to make a record of all orders of the board and both the complaint and orders shall be a part of the record in any case appealed to the district court from the county board of equalization.

C. Either the taxpayer or the county assessor may appeal from the district court to the Supreme Court, as provided for in the Code of Civil Procedure, but no matter shall be reviewed on such appeal which was not presented to the district court.

*D. In such appeals to the district court and to the Supreme Court and in requests for declaratory judgment it shall be the duty of the district attorney to appear for and represent the county assessor. The General Counsel or an attorney for the Tax Commission may appear in such appeals or requests for declaratory judgment on behalf of the county assessor, either upon request of the district attorney for assistance, or upon request of the county assessor. It shall be the mandatory duty of the board of county commissioners and the county excise board to provide the necessary funds to enable the county assessor to pay the costs necessary to be incurred in perfecting appeals and requests for declaratory judgment made by the county assessor to the courts.*

E. In all appeals taken by the county assessor the presumption shall exist in favor of the correctness of the county assessor's valuation and the procedure followed by the county assessor.

(Emphasis added.)

¶6 As this Court noted in our show cause order, neither the district attorney nor the Oklahoma Tax Commission have made an entry of appearance on behalf of Assessor. Instead, Assessor's general counsel, after requesting the district attorney not appear, has instead entered an appearance as sole counsel representing Assessor.

## *II. Assessor's Argument*

¶7 In support of its decision not to be represented on appeal by the district attorney or Tax Commission, Assessor, in its reply to this Court's show cause order, listed over 70 cases filed since 2005 wherein its current general counsel has brought those appeals alone, without objection. Moreover, Assessor argues that 19 O.S.2011, § 527 authorizes its general counsel to bring the appeal. That statute, enacted in 1998, states:

*The sheriff, treasurer or assessor in a county shall have the authority to employ a general counsel, either in-house as a staff attorney or through an outside law firm, to advise or represent that officer and his or her office in the performance of the official duties of that office. The Board of County Commissioners shall approve all contracts for outside counsel. A general counsel employed pursuant to this section shall be compensated from the funds of the employing county office.*

(Emphasis added.)

¶8 We disagree with Assessor's interpretation of the scope of § 527.

*III. Discussion*

¶9 We begin by noting that:

The “Oklahoma Tax Commission” is hereby created, and shall possess such duties, powers and authority as are hereinafter defined, and as are now or as may hereafter be conferred upon it by law. ...

68 O.S.2011, § 102.

¶10 Further,

The purpose of this article, which may be cited as the “Uniform Tax Procedure Code”, is to provide, so far as is possible, uniform procedures and remedies with respect to all state taxes. Unless otherwise expressly provided in any state tax law, heretofore or hereafter enacted, the provisions of this article shall control and shall be exclusive.

68 O.S.2011, § 201.

¶11 Moreover,

The Oklahoma Tax Commission is hereby authorized to enforce the provisions of [Uniform Tax Procedure Code, §§ 201 – 282] and to promulgate and enforce any reasonable rules with respect thereto.

68 O.S.2011, § 203.

¶12 To accomplish these mandates, the Tax Commission is required to hire  
General Counsel.

The Tax Commission shall employ a Chief Attorney to be designated “General Counsel” and other attorneys each to be designated “attorney” who shall be the legal advisors for the Commission and are authorized to appear

for and represent the Commission in any and all litigation that may arise in the discharge of its duties. ...

68 O.S.2011, § 105.

¶13 The reason for these requirements is to provide stability, consistency, and uniformity of public tax laws and the judicial decisions interpreting the same. The Legislature has chosen to charge the Oklahoma Tax Commission with the responsibility to monitor ad valorem taxation in this state. *See, e.g.*, 68 O.S.2011, § 2830<sup>2</sup> and § 2875.<sup>3</sup>

¶14 It goes without saying that seventy-seven independent county assessors, each bringing appeals of issues important only to them, could create a confusing body of contradictory tax policies and jurisprudence, thus creating inconsistency and unpredictability in ad valorem taxation enforcement. By requiring the General Counsel of the Tax Commission to coordinate and choose those cases which should be appealed and which should not, certainty, stability, uniformity, and predictability of public tax policy is promoted and maintained, thus contributing to the economic development of the State. Along the same line, requiring the district attorney to represent Assessor in an appeal provides a first level of objective, independent review of Assessor's attempts to levy a tax in opposition to the

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<sup>2</sup> That section reads in part: "The Oklahoma Tax Commission shall monitor the progress of valuation in each county as it occurs each year. .... B. The Oklahoma Tax Commission shall establish guidelines for determining the extent of noncompliance with the applicable law or administrative rules governing valuation of taxable property."

<sup>3</sup> That section begins: "A. There is hereby created within the Oklahoma Tax Commission the Ad Valorem Division which shall be administered by a Director...."

decision of the Board of Equalization, or in this case, in alleged contravention of law. In this connection, the district attorney can in turn confer with the Tax Commission to coordinate appellate activity on a state-wide basis. We therefore conclude Assessor has incorrectly interpreted the clear language of this statute.<sup>4</sup>

¶15 Assessor's argument is clearly contrary to both public policy and statute.

Again, the relevant language of § 2880.1(D) states:

*In such appeals to the district court and to the Supreme Court and in requests for declaratory judgment it shall be the duty of the district attorney to appear for and represent the county assessor. The General Counsel or an attorney for the Tax Commission may appear in such appeals or requests for declaratory judgment on behalf of the county assessor, either upon request of the district attorney for assistance, or upon request of the county assessor. (Emphasis added.)*

¶16 Assessor proceeds under the premise that § 2880.1(D) authorizes "any" general counsel, specifically Assessor's § 527 employee, to prosecute an appeal without the district attorney's appearance. We infer that Assessor has interpreted the phrase "The General Counsel or an attorney for the Tax Commission" to mean "Assessor's general counsel or an attorney for the Tax Commission." This is clearly an incorrect reading of this phrase, given § 105's definition.

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<sup>4</sup> We draw no conclusions from Assessor's "70 instances since 2005" of violations of law, other than to note that being historically in violation of law does not justify continued future violations. Put another way, 70 wrongs don't make it right.

The Tax Commission shall employ a Chief Attorney to be designated "General Counsel" and other attorneys each to be designated "attorney" ...

¶17 Section 105's definition is clearly contrary to Assessor's interpretation of "General Counsel" but is completely consistent with § 2880.1(D)'s language that "The General Counsel or an attorney for the Tax Commission may appear in such appeals ... on behalf of the county assessor, ...".

¶18 Next, Assessor's argument is that it's § 527 employee general counsel can bring an appeal. Again, Assessor is mistaken. Section 527, a general statute, does not permit Assessor to bring an appeal in violation of the clear prohibition of § 2880.1(D), which is a specific statutory exception to the general statute set out in § 527. It is a well-settled rule of statutory construction that where a matter is addressed by two statutes, one specific and one general, the specific statute controls. *Hall v. Globe Life and Acc. Ins. Co. of Okla.*, 1999 OK 89, ¶ 5, 998 P.2d 603, 605; *In re C.R.T.*, 2003 OK CIV APP 29, ¶ 31, 66 P.3d 1004, 1011.

¶19 It follows that had the Legislature intended Assessor's § 527 general counsel to bring an appeal, there would be little need for § 2880.1(D). Further, had the Legislature intended Assessor's § 527 general counsel to prosecute an appeal, it could have simultaneously or subsequently modified or repealed portions of § 2880.1(D) to so permit. We note when § 527 was enacted, § 2880.1(D) had been in effect for over 9 years.

¶20 We particularly note the authority given the Assessor's § 527 general counsel differs from that given the Tax Commission's General Counsel in § 105. Assessor's general counsel is only authorized to "*advise or represent that officer and his or her office in the performance of the official duties of that office.*" In stark contrast, the General Counsel or attorneys for the Tax Commission "*shall be the legal advisors for the Commission and are authorized to appear for and represent the Commission in any and all litigation that may arise in the discharge of its duties.*" A strong argument can be made that the "performance of official duties" of the Assessor does not include filing independent appeals, while such filings are plainly contemplated in the General Counsel's mandate to "represent the Commission in any and all litigation that may arise in the discharge of its duties...". Clearly, had the Legislature intended a § 527 general counsel to file appeals, it would have expanded the authority of a § 527 general counsel to represent the Assessor in any and all litigation that may arise in the discharge of its duties. Because the Legislature has chosen to vest a § 527 general counsel with far less authority than that vested in the Tax Commission's General Counsel, Assessor's unilateral actions are clearly in excess of its authority.

#### *IV. Summary*

¶21 That the Assessor has authority to employ general counsel pursuant to § 527 to advise and consult with Assessor in the performance of the official duties of that office is undisputed and is correct.

¶22 However, § 2880.1(D) clearly authorizes only the district attorney or “The General Counsel ... for the Tax Commission” or “an attorney for the Tax Commission” to appear on behalf of Assessor in an appeal. Contrary to Assessor’s argument, this statute does not authorize the § 527 general counsel for Assessor to prosecute the appeal alone. While § 527’s broad language permits Assessor to employ general counsel, the specific language of § 2880.1(D) clearly limits what Assessor’s general counsel may do.

#### **CONCLUSION**

¶23 Finding this appeal was brought in violation of 68 O.S.2011, § 2880.1(D), and that Assessor has presented no good reason why this appeal should be continued in violation of that statute, we grant Appellees’ motion to dismiss the appeal.

¶24 **DISMISSED.**

THORNBRUGH, P.J., and RAPP, J., concur.

September 26, 2013