



OFFICE OF ATTORNEY GENERAL  
STATE OF OKLAHOMA

ATTORNEY GENERAL OPINION  
2018-1

Douglas E. Burns, Chairman  
Board of Regents for the Oklahoma State University  
and Oklahoma Agricultural and Mechanical Colleges  
2800 North Lincoln Blvd.  
Oklahoma City, Oklahoma 73105

March 15, 2018

Dear Chairman Burns:

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

**Does the requirement in 70 O.S.2011, § 3418 that a Board of County Commissioners dedicate county ad valorem tax revenues to fund the county's cooperative extension office violate OKLA. CONST. art. XXI, § 1 or OKLA. CONST. art. X, § 9?**

I.  
BACKGROUND

Established by the Smith-Lever Act of 1914 (the "Act"), the Cooperative Extension Program (the "Extension Program") is designed as a partnership between the United States Department of Agriculture and the states' land-grant universities to promote and disseminate "useful and practical information on subjects relating to agriculture, uses of solar energy with respect to agriculture, home economics, and rural energy[.]" 7 U.S.C. § 341. "Cooperative agricultural extension work shall consist of the development of practical applications of research knowledge and giving of instruction and practical demonstrations of existing or improved practices or technologies" regarding the subjects listed above, to be "carried on in such manner as may be mutually agreed upon by the Secretary of Agriculture and the State agricultural college[.]" *Id.* § 342. Congress is authorized to appropriate funds to states that participate in the Extension Program, subject to the requirement that the states match the amount of federal funds appropriated. *Id.* § 343(a), (e).

Oklahoma participates in the Extension Program through the Board of Regents for the Oklahoma Agricultural and Mechanical Colleges (the "Board") and Oklahoma State University ("OSU"). 70 O.S.2011, § 3418. Section 3418 provides, in relevant part, as follows:

The Board...shall organize and conduct agricultural extension work under the direction of [OSU], and may accept federal funds for such purpose and comply with federal laws providing for cooperative agricultural extension work as follows:

1. The provisions of [the Act], and any other federal authorizations providing federal money to State Extension Divisions, are hereby accepted by the State of Oklahoma; and the state hereby agrees and obligates itself to comply with all the provisions of said Acts and assents to the receipt of grants of money authorized by the Acts, paid annually to each state which by the action of its Legislature has assented to the provisions of the aforesaid Acts;
2. The Board...acting for and on behalf of [OSU] is hereby authorized to receive the grants of money appropriated under said Acts, and to organize and conduct agricultural extension work, which shall be carried on in connection, and under the direction of [OSU] in accordance with the terms and conditions expressed in the Acts of Congress aforesaid, any other Acts supplemental thereto, or any rules and regulations promulgated under authority granted in the aforesaid federal acts[.]

*Id.* In addition to the involvement of the Board and OSU in the Extension Program, Section 3418 contemplates, and indeed requires, operational and financial cooperation from Oklahoma counties:

3. Subject to approval of the board of county commissioners' annual estimate of needs by the excise board, *the board of county commissioners of the respective counties of the state shall contract and agree with the Department of Agriculture of the United States of America and [OSU], or with the authorized agent or agents of said Department of Agriculture and said University, to cooperate with the Department of Agriculture and [OSU] in conducting farm demonstration work and home demonstration work including 4-H club work in their respective counties under such rules and regulations as may be prescribed jointly by the Department of Agriculture and [OSU].* Such agreement shall be in writing, signed by the members of the board of county commissioners and the authorized agent of the United States Department of Agriculture and [OSU], and may be entered into at any regular or adjourned session of said board, after the 30th day of June of each year. *The board of county commissioners shall provide an adequate amount in their annual estimate of needs for the ensuing year to carry out the provisions of such contract, same to be included in the salary fund and expense fund to be paid on order of the board of county commissioners to such workers as may be agreed upon* between said board of county commissioners and the authorized agent of the Department of Agriculture and [OSU] *to carry on said farm demonstration work and home demonstration work in said county[.]*

*Id.* (emphasis added). See also A.G. Opin. 1984-103 (discussing the mandatory nature of county funding obligations under Section 3418).

Through the Board and OSU, the Extension Program is administered by the Oklahoma Cooperative Extension Service (the “Extension Service”), which maintains satellite offices in each of Oklahoma’s 77 counties.<sup>1</sup> It is our understanding that OSU interviews, hires, evaluates, and determines the salary of all Extension Service agents. Then, once hired, the agents are assigned to specific counties and serve only that area. The individual counties negotiate and enter into unique contracts with U.S. Department of Agriculture and OSU for the Extension Program, decide when and which programs will be offered by the county office, provide contacts for specific inquiries, and provide county-relevant literature through individualized county Extension Service websites.

## II. DISCUSSION

To determine the constitutionality of the county-funding requirement of Title 70, Section 3418, we begin with the recognition that under Oklahoma law, “[a] legislative act is presumed to be constitutional and will be upheld unless it is clearly, palpably and plainly inconsistent with the Constitution.” *Lee v. Bueno*, 2016 OK 97, ¶ 7, 381 P.3d 746, 740. Accordingly, Oklahoma courts “scrutinize a constitutional attack on a statute with great caution and grave responsibility.” *Lafalier v. Lead Impacted Communities Relocation Assist. Tr.*, 2010 OK 48, ¶ 15, 237 P.3d 181, 189-90.

### **A. The use of county ad valorem tax revenues to fund a county’s Extension Service office does not violate Article XXI, Section 1 of the Oklahoma Constitution.**

Article XXI, Section 1 of the Oklahoma Constitution provides that “[e]ducational, reformatory, and penal institutions and those for the benefit of the insane, blind, deaf, and mute, and such other institutions as the public good may require, *shall be established and supported by the State* in such manner as may be prescribed by law.” OKLA. CONST. art. XXI, § 1 (emphasis added). This provision has been interpreted to prohibit county funding of the named institutions. *See, e.g., Battles v. State ex rel. Okla. Comm’n for Crippled Children*, 1951 OK 313, 244 P.2d 320 (holding that the University Hospital, which provided patient care under the Crippled Children’s Act, was a State institution, and therefore must be maintained solely at the expense of the State.); *Bd. of Cty. Com’rs of Cty. of Bryan v. Okla. Dept. of Corrections*, 2015 OK CIV APP 86, 362 P.3d 241 (holding that Article XXI, Section 1 forbids the use of county funds to support State prisons). The Oklahoma Supreme Court has stated explicitly that a “center of higher education” is the type of educational institution that must be supported solely by the State under Article XXI, Section 1. *Grimes v. City of Oklahoma City*, 2002 OK 47, ¶ 16, 49 P.3d 719, 725; *see also* A.G. Opin. 1988-109 (concluding that Article XXI, Section 1 prohibits counties and municipalities from providing funding for construction or maintenance of roads, streets, or parking lots at State institutions and centers of higher education).

OSU, which, together with the Board, has been charged with the administration of the Extension Program, is a State university and therefore subject to the State-funding requirement of Article XXI, Section 1. Accordingly, any attempt by the legislature to impose even a portion of the burden

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<sup>1</sup> *See generally* Fred Causley, *Cooperative Extension Services*, THE ENCYCLOPEDIA OF OKLAHOMA HISTORY AND CULTURE, available at [www.okhistory.org](http://www.okhistory.org) (last visited Jan. 30, 2018). A listing of the Oklahoma Cooperative Extension Service’s 77 county offices can be viewed at <http://countyext2.okstate.edu/> (last visited Jan. 30, 2018).

of maintaining OSU upon the counties is “unconstitutional and inoperative.” *Chicago, R.I. & P. Ry. Co. v. Excise Bd. of Stephens Cty.*, 1934 OK 392, ¶ 0, 34 P.2d 274, 274.

Nevertheless, the Oklahoma Supreme Court has distinguished between maintaining the institution itself and maintaining county-based programs that are administered by the institution. In *Protest of Chicago, Rock Island & Pacific Railway Company*, the Court analyzed the Crippled Children’s Act, which required counties to provide funding for the State hospital and a program that cared for patients within the counties. *Protest of Chicago, R.I. & P. Ry. Co.*, 1933 OK 384, 23 P.2d 157. The Court held that the portion of the Act that placed the expense of “caring for [] patients in [the] county,” preventing “epidemics” in the county, promoting the “public health in a county,” and “the expense of [the] county department of health” did not conflict with Article XXI, Section 1. *Id.* ¶ 0, 23 P.2d at *Syllabus*. The Court reasoned that when a statute is “defraying the expense” that an institution incurs for county purposes, instead of strictly maintaining a State institution, it does not violate the Constitution. *Id.* ¶ 6, 23 P.2d at 158.

The reasoning in *Protest of Chicago* is equally applicable to the county funding of the Extension Service programs under Title 70, Section 3418. Any funding that is derived from ad valorem taxes under Section 3418 goes directly to “organiz[ing] and conduct[ing] agricultural extension work” and “conducting farm demonstration work and home demonstration work . . . in the[] respective counties,” and not to maintaining the OSU campus or any of its educational programs. 70 O.S.2011, § 3418(2)-(3). Though informational in nature, the work performed by Extension Service agents is not central to the function of OSU such that it is constitutionally required to be supported solely by the State. The Extension Program is open to residents of all ages and education levels, and there are no admittance requirements as there are with OSU’s formal degree programs. Further, there is no degree or credit earned by attending any Extension Service courses. Because the county funds allocated pursuant to Title 70, Section 3418 are used only for administering Extension Service programs in the respective counties, the county-funding requirement does not violate Article XXI, Section 1 of the Oklahoma Constitution.

**B. The use of county ad valorem tax revenues to fund a county’s Extension Service office does not violate Article X, Section 9 of the Oklahoma Constitution.**

Article X, Section 9 of the Oklahoma Constitution states, in relevant part, that “[n]o ad valorem tax shall be levied for State purposes, nor shall any part of the proceeds of any ad valorem tax levy upon any kind of property in this State be used for State purposes.” OKLA. CONST. art. X, § 9. In other words, it is unconstitutional for a program that serves a state purpose to be funded by ad valorem taxes. Though Article X, Section 9 prohibits counties from paying for programs that serve a state purpose, “[o]ur Constitution does not in any manner attempt to define the difference between a state purpose and a local or county purpose, but places that matter in the Legislature.” *Excise Bd. of Ottawa Cty. v. St. Louis-San Francisco Ry. Co.*, 1936 OK 360, ¶ 17, 57 P.2d 261, 264 (quoting *Herndon v. Anderson*, 1933 OK 490, 25 P.2d 326). The Legislature “is presumed to have been as careful to observe the requirements of the Constitution in enacting the statute . . . [and a] legislative intent to violate the Constitution is never to be assumed if the language of the statute can be satisfied by a contrary construction.” *Id.* ¶ 23, 57 P.2d at 265 (quoting *Herndon*, 1933 OK 490, 25 P.2d 326).

To understand what is meant by the term “state purpose,” we turn to the Oklahoma Supreme Court’s opinion in *State ex rel. Dept. of Human Services v. Malibie*, 1981 OK 18, 630 P.2d 310. In that case, the Court evaluated the constitutionality of a program created by the Crippled Children’s Act. The act included a provision that required counties to “appropriate at least one-fifth (1/5) of one mill on the assessed valuation of the respective counties to the Crippled Children’s Program.” *Id.* ¶ 2, 630 P.2d at 312. The court reasoned that because the program was “controlled and administered by a Department of the State and State officers” it served a state purpose and was therefore unconstitutional. *Id.* ¶ 24, 630 P.2d at 317. In coming to this conclusion, the Court noted that “even a cursory reading of the act makes it clear that the program is a State program, controlled by the State department and State officers.” *Id.* ¶ 23, 630 P.2d at 316. As examples, the Court explained that under the program, a State agency had the power to (i) create a plan and make necessary rules for the program, (ii) receive and expend funds from the federal government, (iii) create and maintain “methods of administration,” to supervise the administration of the program, and (iv) “approve or disapprove” contracts. *Id.* ¶¶ 23, 630 P.2d at 316-17. In light of these examples of State control, the Court found that “the mere fact that money is being used to aid county residents does not make a program a county program.” *Id.* ¶ 20, 630 P.2d at 316. Indeed, the Court further observed that “the only function of the county is to provide the funds, then perform a ministerial function required prior to final payment.” *Id.*

Certainly, the administration of the Extension Program bears some resemblance to the program described in *Malibie*. The Board, a State entity, has the statutory authority to administer the Extension Program in conjunction with OSU, a State university. Further, we understand that OSU controls the hiring and salary determination of the county agents. However, unlike *Malibie* the counties’ role in the Extension Program is more than merely “ministerial.” In *Malibie*, the counties were only funding the program, but here the individual counties play a large role in executing the logistics of the Extension Program. Each county negotiates and executes unique contracts with the relevant federal and State agencies for the extension services. The counties organize and schedule the courses to be offered through their own Extension Service offices staffed by a combination of county and Extension Service personnel. Each county also provides county-relevant literature through individualized county Extension Service websites. If residents have inquiries about the Extension Program or about specific course offerings, they are directed to the county Extension Service office, not the State.

A better comparison to the county-funding requirement of Section 3418 is found in *Excise Board of Stephens County v. Chicago, Rock Island & Pacific Railway Company*, 1934 OK 389, 34 P.2d 268. There, the Court analyzed whether an ad valorem tax levy for the purpose of funding a county audit performed by a state official was prohibited by Article X, Section 9. Concluding that the audit served solely a county purpose, the Court reasoned that “[t]he purpose of the levy must be judged by the object to be accomplished thereby. . . . An audit of the books of a particular county is a matter in which the other counties of the state have no particular interest.” *Id.* ¶ 29, 34 P.2d at 273. The Court went on to state that “[i]t is none the less county purpose because a state officer is charged with the duty of designating the persons who shall conduct the same, instead of some one of the county officers.” *Id.*

As with the county audit statute at issue in *Stephens County*, the Extension Program is supervised and administered by the Board and OSU, and classes are conducted by agents hired and employed

by the State. But those facts alone do not make the administration of the Extension Program a “state purpose.” Each county Extension Service office serves only that county; other counties in the state have no interest in the services offered from that office. The object of a county Extension Service office is to serve the needs of *that* county. Therefore, the object of the Extension Program is to serve a county, rather than a State, purpose.

Finally, under *Excise Board of Ottawa County*, we must presume that the Legislature was cognizant of Article X, Section 9 when drafting the language of Section 3418. 1936 OK 360, ¶ 23, 57 P.2d 261, 265. The statute provides explicitly that each county “shall contract and agree with the Department of Agriculture of the United States of America and [OSU]” and shall “cooperate with the Department of Agriculture and the University in conducting farm demonstration work and home demonstration work including 4-H club work *in their respective counties*.” 70 O.S.2011, § 3418 (3) (emphasis added). The statute also requires counties to “provide an adequate amount in their annual estimate of needs for the ensuing year to carry out the provisions of such contract.” *Id.* It is presumed that this clear articulation is the Legislature’s method of defining the Extension Program as a county program that serves a county purpose, such that it complies with Article X, Section 9.

Because the counties’ role is more than ministerial, and the Legislature “is presumed to have been as careful to observe the requirements of the Constitution in enacting the statute,” *see Excise Bd. of Ottawa Cty. v. St. Louis-San Francisco Ry. Co.*, 1936 OK 360, ¶ 23, 57 P.2d 261, 265, we conclude that the county-funding requirement in Section 3418 does not violate Article X, Section 9 of the Oklahoma Constitution.

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

**The requirement in 70 O.S.2011, § 3418 that a Board of County Commissioners dedicate county ad valorem tax revenues to fund the county’s cooperative extension office does not violate OKLA. CONST. art. XXI, § 1 or OKLA. CONST. art. X, § 9.**



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