



**W. A. DREW EDMONDSON
ATTORNEY GENERAL OF OKLAHOMA**

March 7, 2005

Dear Representative:

I write in regard to House Bill 1879 by Representative Fred Morgan, which would limit the ability of the Attorney General to bring litigation on behalf of the state by requiring, in advance, approval from the Governor or the Legislature.

Insofar as the bill would require legislative approval to file a lawsuit it is most likely unconstitutional. The requirement to obtain the approval of the governor, while likely constitutional, is impractical, ill-advised, fraught with potential problems, and bad government. It injects an element of politics into decisions that should be based on law and facts. It raises issues for the defense that could prolong litigation and increase expenses to the state.

Of the fifty state Attorneys General, 43 are popularly elected, five are appointed by governors and two are appointed by other authorities (Maine, legislature, and Tennessee, Supreme Court).

In no state, including the five where the A.G. is appointed by the governor, is such advance notification and permission required.

In 1976 the Fifth Circuit Court of Appeals ruled on a case out of Florida where the authority of the Attorney General was challenged. In State of Fla. Ex rel Shevin v. Exxon, 526 F.2d 266, the court said the following:

The office of attorney general is older than the United States and older than the State of Florida. As chief legal representative of the king, the common law attorney general was clearly subject to the wishes of the crown, but, even in those times, the office was also a repository of power and discretion; the volume and variety of legal matters involving the crown and the public interest made such limited independence a practical necessity. Transposition of the institution to this country, where governmental initiative was diffused among the officers of the executive branch and the many individuals comprising the legislative branch, could only broaden this area of the attorney general's discretion.

The attorney general must have jurisdiction to file a lawsuit and, typically, that jurisdiction is found in the statutes. Lack of jurisdiction to litigate, in any lawsuit, would immediately give rise to defense

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motions to dismiss. In many areas of the law, e.g. tax cases or the regulation of public utilities, authority is given by statute to other agencies of government. The legislature is free to broaden or limit those grants of statutory authority. But, to give us the statutory authority and then require, on a specific piece of litigation, a political green light from the legislature or governor would shift the focus from the general jurisdiction of the office to the justification for a particular lawsuit. Those decisions should be legal decisions, not political ones.

It is clear that the impetus for this legislation is the contemplated legal action against the poultry industry for pollution of Oklahoma waters. The Farm Bureau claims to have written the language and has vowed that this legislation would pass. In doing so they are representing the interests of the major poultry companies, not the farmers and certainly not the pollution laws of this state. Oklahoma law prohibits runoff of poultry waste into our streams, rivers and lakes – the Attorney General is charged with enforcing that law. Rather than give us the duty and then placing roadblocks to accomplishing that duty, it would be far more honest to pass legislation saying it is okay if poultry runoff goes into our streams and lakes.

Make what they are doing legal, or allow me to enforce the laws of this state.

Another aspect of the bill, as it was reported out of committee, has received little public attention. It would prevent the Attorney General from assuming direction and control over litigation that involves state agencies, reversing nearly 100 years of common law, case law and statutory authority. This lack of direction and control would further complicate the trying of complicated cases, e.g. Terry D., Battles and Hissom, and greatly increase costs to the state.

Newspapers from across the state have questioned the wisdom and motivations for this bill. The *Muskogee Phoenix*, which does not like the idea of litigation on the poultry issue, still believes the Morgan bill is a bad idea. I have seen no editorial support for HB 1879 and no public support for the bill except from the poultry industry and the Farm Bureau. Attached are a few examples of editorials and a letter from Gerald J. Pappert, former Pennsylvania Attorney General, critical of the bill.

The poultry companies, I am convinced, are waiting to see what happens on this bill before returning to the negotiating table. The more viable the Morgan bill appears, the less likely this issue will be negotiated and the more likely it will be litigated. If it appears that this bill might become law it would be prudent for us to file the lawsuit as soon as possible to avoid giving this issue to the poultry companies' lawyers.

As always, if you wish to discuss this bill or any other matter I will make myself available to you. If HB 1879 is called for debate and a vote I hope you will carefully consider these arguments.

Sincerely,



W. A. DREW EDMONDSON
ATTORNEY GENERAL

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March 3, 2005

Honorable W.A. Drew Edmondson
Attorney General of Oklahoma
Office of Attorney General
State Capitol, Rm. 112
2300 N. Lincoln Blvd
Oklahoma City, OK 73105

Dear General Edmondson:

I have recently become aware through news reports of proposed legislation which would require you to obtain approval from your Governor or Legislature to initiate any civil litigation. Should it become law, the bill would fundamentally alter the powers and duties of your office and would limit your ability, as Attorney General, to take legal actions that you believe best protect your state and its citizens. I write, not just as a former Attorney General of Pennsylvania, but also as a Republican.

While most State Attorneys General are elected as representatives of their respective political parties, they are first and foremost lawyers and the chief legal and law enforcement officers in their states. The Attorney General's responsibilities are to his or her clients, the states, their agencies and ultimately the citizens. The Attorney General's charge is to do what they believe is right under the law and best for the states and citizens they serve. Requiring you to obtain authorization from your Governor or Legislature before filing a lawsuit would undermine the independence of your office and would compromise your ability to take actions that you believe are in the best interest of the citizens of Oklahoma. This is just one of reasons why in no other State Attorney General, to my knowledge, is required to seek gubernatorial or legislative approval before initiating a civil lawsuit.

I do not know in any detail the arguments, factual or legal, on either side of the dispute which has lead to the introduction of this legislation. What I do know is that no matter the issue, limiting the authority of a State Attorney General in this fashion will hinder the ability

Honorable W. A. Drew Edmondson
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of the Attorney General, Republican or Democrat, to properly carry out the responsibilities of the office.

Sincerely,



Gerald J. Pappert

GJP/kmc

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Mother, may I?

By World's Editorial Writers
2/19/2005

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Lawmakers move to limit AG in suits

There's an old children's game in which players advance to a goal line by asking permission of "mother." Mother instructs each player on the type and number of steps a player can take. But before the players advance they must ask the question, "Mother, may I?"

House Republicans are trying to play the same game with Oklahoma's top law enforcement officer, Attorney General Drew Edmondson. House Bill 1879, which passed the House Judiciary Committee last week, would require the AG to get permission from the governor or Legislature before filing a civil lawsuit.

The measure undercuts the authority of a public official who Oklahomans have repeatedly elected as their top law enforcement and legal representative. Voters give Edmondson the power to make decisions that affect their lives and he's used that power wisely and judiciously through the years to protect consumers and the health and well-being of citizens.

Edmondson led the fight for a settlement with tobacco companies that has brought and will bring millions of dollars to the state. If this new bill were in effect, Edmondson probably could not do what he did then. The bill would limit his participation in multi-state lawsuits.

The timing of this bill is beyond curious in another respect. Edmondson is in the middle of talks with the poultry industry over pollution of streams, rivers and lakes in eastern Oklahoma. He has threatened a lawsuit to correct problems he believes are a direct result of chicken litter from poultry operations.

"As long as this bill is alive, we will not get the poultry industry back to the negotiating table," Edmondson said. "Why should they negotiate if they think the Legislature is going to remove our ability to file a suit?"

Indeed, the bill would take the hammer out of the AG's tool chest.

Wide-eyed, some lawmakers ask why the AG should not have some oversight.

Rep. Fred Morgan, R-Oklahoman City, said, "I don't think it's too much to ask that the attorney general have a client and direction from the governor, or in some cases, the Legislature. I don't see that as political at all."

Really? Edmondson can get advice from lawmakers or the governor at any time and he doesn't need a bill to do that. Shackling the state's top legal officer from using his good judgment to file a lawsuit when he believes that one is in the best interest of the public is a dangerous precedent. If Edmondson is off-base in litigation courts are there to rein him in.

The Legislature plays lots of games. It should not be allowed to force Drew Edmondson to play this one.

MONDAY, FEBRUARY 21, 2005 . .

OUR VIEWS

Job description

Are politics at play in AG bill?

TRY AS we might, we can't shake the feeling that politics, more than anything, is at the heart of a legislative attempt to clarify the responsibilities of Oklahoma's attorney general.

House Bill 1979, by Rep. Fred Morgan, R-Oklahoma City, would require that the attorney general seek the governor's or Legislature's permission before filing civil lawsuits. The House Judiciary Committee approved the bill last week in a straight party-line vote, after listening to criticism of the bill from Attorney General Drew Edmondson.

Edmondson, a Democrat, said the bill would hinder his office's ability to file lawsuits on behalf of the state and would politicize decisions made by the attorney general. Of immediate concern to Edmondson is how the bill might affect settlement talks with the poultry industry.

Edmondson and a handful of poultry producers are at an impasse over how to address water-quality issues in northeastern Oklahoma that are tied to disposal of chicken litter. He has threatened to file suit against the companies if an agreement can't be reached, but says the companies have no incentive to return to the table as long as Morgan's bill is alive.

We've at times been critical of Edmondson for overreaching, but don't believe his effort to protect Oklahoma's scenic rivers fits that description. The move has placed him at odds with the Oklahoma Farm Bureau, which backs this bill, although a Farm Bureau official said he would support it even if a settlement is reached.

Morgan insists he isn't "carrying the water for any industry" and that Edmondson "simply doesn't want any control over his office." Perhaps. But why the concern about this particular office? Are similar efforts planned to monitor other executive branch offices? If not, why not?

Handcuffing the attorney general

I'm outraged that the state House of Representatives is fighting to remove power from the Oklahoma attorney general's office. In a strictly partisan committee vote on House Bill 1879, every Republican voted in favor of limiting the attorney general's power by requiring him or her to seek permission from the Legislature prior to proceeding with a civil lawsuit. This would effectively handcuff an elected official from pursuing the duties he or she is elected to do.

The Legislature is influenced by corporate lobbyists. This would cause lawmakers to be pressured by big business and other corporate interests to deny permission to the attorney general to do what's sometimes necessary. Also troubling is that some legislators want to remove power from one elected official while trying to add to their own.

David Håu
Yukon

Party politics

Republicans on the state House Judiciary Committee recently voted along party lines to force state Attorney General Drew Edmondson to get their permission before taking action against corporate polluters. Edmondson has been negotiating with poultry companies in Arkansas and eastern Oklahoma to make them stop polluting Oklahoma's scenic rivers, lakes and drinking water supplies with excess poultry waste. Three committee members who voted to protect the polluters are Republicans from the Tulsa area, where residents are most affected by this environmental damage. The other committee members who voted to keep the attorney general from doing his job are all Republicans. Those voting against House Bill 1879 are all Democrats.

The bill will now go to the House floor for consideration. Let's hope the rest of the House of Representatives, where the Republicans hold a small majority, are more interested in taking care of the state's natural resources and the citizens who sent them to the state Capitol than they are in flexing newfound political muscle.

Jackie Gaston
Yukon

THE OAKLAND JOURNAL 2.27-05

Bill to limit AG's powers is an attack on the Constitution

Oklahoma government, like its progenitor the U.S. Constitution, is based on the separation of powers among the three branches of government — the legislative, the judicial and the executive. But a bill authored by Rep. Fred Morgan intends to blur the line between the executive and legislative branches. Morgan, an Oklahoma City Republican, got his bill through the House Judiciary Committee last week. If approved, it would require the Attorney General — elected in a

statewide vote and part of the executive branch — to go before the Legislature and/or the governor to gain approval before filing any lawsuits. Ignore for a moment the charges flying among Attorney General Drew Edmondson, Morgan and the leadership of the Oklahoma Farm Bureau, which supported Morgan's bill. There certainly is some political payback in the bill, but that's not what should concern voters.

The bill is an out-and-out attack on America's form of government.

It may not seem like a major problem, but the Legislature in Oklahoma already has the majority of power under the Constitution. If this bill is allowed to pass and passes muster with the State Supreme Court, the Legislature would eventually be able to supplant the judicial and executive branches of government. In effect, it would be a one-branch state — which would mean that the Speaker of the House would basically run the state. Our form of government was set up because we

distrust of putting too much power in one man's hands or the hands of a single group of people. By dividing powers, and giving each branch the opportunity to balance the effects of the others, we have set up a pretty good form of government that, above all, guarantees our freedom.

Rep. Morgan may have thought he was just responding to one tiny complaint from the corporate farming industry, but he was actually starting the state down a path no one wants to travel.

Bill to limit AG's powers payback to special interests

To the Editor:

I would encourage all Oklahomans who do not wish to see their state turned into an American Banana Republic to call their state representative and oppose HB 1879 which would seriously hamstring our Attorney General in his attempt to work on the side of Oklahoma citizens. This bill would, among other injustices, deny the AG's ability to force polluting companies, companies who wish to use our lands and waters as their private dumping grounds, to respect our right to a livable environment. It is another blatant attempt on the part of our politicians kowtow to special interests who line their pockets every election cycle.

— R. LYNN GREEN



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Attorney general has reason to cry foul play

Rather than do their job, some legislators want to dictate to state Attorney General Drew Edmondson what his job entails.

Rep. Fred Morgan, R-Oklahoma City, has introduced legislation that would require the attorney general to seek consent from the governor or the Legislature before filing a lawsuit on the state's behalf.

No other state attorney in the nation works under such a requirement, but apparently, Morgan and others feel Edmondson has acted unreasonably in threatening a lawsuit against five poultry companies, blaming them for the nutrient overload in the Illinois River and other streams and lakes in eastern Oklahoma.

Actually, studies have shown that chicken litter spread on fields and pastures is washing into streams and leading to algae blooms that deteriorate water quality and upset the balance of life in streams with the potential of causing fish kills.

Edmondson signed a contract last year with a group of attorneys to litigate against the companies, but no lawsuit has been filed to date. The companies, in the meantime, said they were ready to negotiate a settlement on litter disposal, but because of the contract with the attorneys - and fees that must be paid to them now - negotiations have

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come to a standstill.

First, Morgan's bill is inappropriate.

The attorney general simply should have the authority to sue at his discretion to recuperate losses that the state has suffered and cannot recover any other way.

The push to strip the attorney general of his authority appears to be a result of pressure from poultry companies and agricultural interests, which fear the industry will be hurt by a court-ordered settlement.

Where we disagree with Edmondson is over the contract with attorneys.

The chicken litter issue is no longer about the litter, but over who is going to pay the attorneys with whom Edmondson contracted. The main question is not what the companies are going to do to keep the litter out of the streams, but how much the attorneys are going to be paid.

Edmondson said this is a lawsuit, if filed, he can win. Then he should have filed it and not depended upon a consortium of attorneys, some from South Carolina, who now have proven only to aggravate and postpone negotiations.

The pollution of area streams and lakes has gone on much too long, and now, we face an even longer delay.

Oklahoma's Legislature has to bear the blame for much of the delay and the poor quality of our streams, too.

Legislators, even some locally, have done little to protect our waterways in the past. They were slow to establish litter application rules for poultry producers and exerted no pressure to make poultry companies assist growers with the disposal of litter.

People 25 years ago recognized and complained about the deterioration of the Illinois River's water quality, and biologists, as well as those in agriculture, knew what nutrient overload could do to a river.

Complaining about the past doesn't change it, but we ought to learn something from it. Everybody has to get together on fixing the problems with area lakes and streams, or



Edmondson

State scenic rivers

Oklahoma has six state scenic streams: Illinois River, Barren and Mountain forks, and Flint, Lee and Little Lee creeks.

You can find information about the streams at the Web site for the Oklahoma Scenic Rivers Commission at www.scenicrivers.state.ok.us.



Morgan

Edmondson is right - we'll have lakes and streams that aren't any good for fishing or swimming.

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