

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FEB 12 2024

RICK WARREN
COURT CLERK
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STATE OF OKLAHOMA *ex rel.* OFFICE)
OF MANAGEMENT AND ENTERPRISE)
SERVICES,)

Plaintiff,)

v.)

KLEO, INC. d/b/a CLASSWALLET,)

Defendant.)

Case No. CJ-2024-619

ENTRY OF APPEARANCE OF OKLAHOMA ATTORNEY GENERAL

I am the duly elected and sworn Attorney General for the State of Oklahoma.

The State of Oklahoma *ex rel.* Office of Management and Enterprise Services is the named plaintiff in the operative Petition filed in the above-entitled cause. The Petition makes clear that the suit arises out of a contract between the State and a private entity.

As Oklahoma Attorney General, I have the authority to take and assume control of the prosecution of the State's interests in this case. The Oklahoma Constitution provides that: "The Executive authority of the state shall be vested in a Governor... Attorney General... and other officers provided by law and this Constitution... and shall perform such duties as may be designated in this Constitution or prescribed by law." OKLA. CONST. art. VI, § 1. As it relates to the State's involvement in litigation, Oklahoma law currently provides that "the Attorney General as the chief law officer of the state" has the power and duty:

To initiate or appear in any action in which the interests of the state or the people of the state are at issue, or to appear at the request of the Governor, the Legislature, or either branch thereof, and prosecute and defend in any court or before any commission, board or officers any cause or proceeding, civil or criminal, in which the state may be a party or interested; and when so appearing in any such cause or proceeding, the Attorney General may, if the Attorney General deems it advisable and to the best interest of the state, take and assume control of the prosecution or defense of the state's interest therein.

Okla. Stat. Ann. tit. 74, § 18b(A)(3) (emphases added).¹

Therefore, my Office clearly has the power to assume and control the State's litigation. *State ex rel. Derryberry v. Kerr-McGee Corp.*, 1973 OK 132, ¶ 20, 516 P.2d 813, 818 (“In the absence of explicit legislative or constitutional expression to the contrary, [the Attorney General] possesses complete dominion over every litigation in which he properly appears in the interest of the State, whether or not there is a relator or some other nominal party.”). Consistent with this power, I hereby take and assume control of the prosecution of the State's interest in this litigation.

I do not take this action lightly. After reviewing the claims brought in this lawsuit, as well as those in the original lawsuit on this matter, I see no other option because the claims are wholly without merit. Two separate audits compel this conclusion: One from the United States Department of Education's Office of Inspector General² and another from the Oklahoma State Auditor.³ While the Governor's Office may be eager to shift blame for the misuse of over half a million dollars of federal funds, those audits confirm that his administration rejected ClassWallet's internal controls and did not perform review expenditures. When ClassWallet asked the person managing the program on behalf of the State, Ryan Walters, whether ClassWallet should direct questions regarding allowable items for

¹ It should be noted that this statute was amended in 1995 to add the language permitting my Office to appear “in any action in which the interests of the state or the people of the state are at issue,” i.e., my Office can now appear in litigation on my own initiative. CORPORATION COMMISSION—OIL AND GAS—REVENUE AND TAXATION—APPORTIONMENT OF EXCISE TAX MONIES, 1995 Okla. Sess. Law Serv. Ch. 328 (S.B. 233) (WEST); *see also State, ex rel., Pruitt v. Steidley*, 2015 OK CR 6, ¶ 15, 349 P.3d 554, 558 (recognizing that the authority of the attorney general in Okla. Stat. Ann. tit. 74, § 18b was expanded in 1995). Consequently, the limited case law interpreting my Office's power prior to 1995 has been rendered obsolete.

² U.S. DEP'T OF EDUC. OFFICE OF INSPECTOR GEN., *Oklahoma's Admin. of the Governor's Emergency Educ. Relief Fund Grant*, (July 18, 2022), <https://oig.ed.gov/sites/default/files/reports/2024-02/Oklahoma%25E2%2580%2599s-Administration-Governor%25E2%2580%2599s-Emergency-Education-Relief-Fund-Grant.pdf>.

³ OKLA. STATE AUDITOR & INSPECTOR, *State of Oklahoma: Single Audit Report* (June 27, 2023), <https://www.sai.ok.gov/Search%20Reports/database/2021SingleAudit.pdf>.

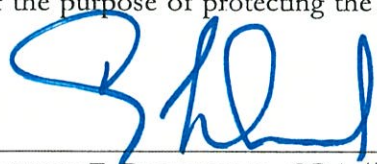
purchase to the State, Walters responded that there was blanket approval with vendors on the platform. Okla. Audit at 58.

The filing of such a meritless suit leaves the State open to paying hundreds of thousands in Defendant's attorneys' fees pursuant to 12 O.S. § 936. As the guardian of the State's interests, I will not sit idly by while taxpayer funds are threatened by frivolous suits. Accordingly, I deem it advisable and in the best interests of the State of Oklahoma to take and assume control of the prosecution of the State's interests in the above-entitled cause.

Further, the attorney purporting to represent the State, Cheryl Plaxico, is hereby terminated. The process for a state agency to obtain legal counsel is laid out in 74 O.S. § 20i. If an agency wishes to be represented by a private attorney, it "shall select an attorney ... from a list of attorneys and firms maintained by the Attorney General." *Id.* § 20i(B). Before entering into a contract with a private attorney, the agency must provide a copy of the proposed contract to the Attorney General. *Id.* § 20i(I). Following this, the Attorney General determines whether to approve the contract. *See Id.* § 20i(J). This process was not followed. Thus, Cheryl Plaxico never represented the State in this matter, and her purported representation of the State in this matter is hereby terminated.

Accordingly, I enter my appearance as counsel in this case for the State of Oklahoma *ex rel.* Office of Management and Enterprise Services solely for the purpose of protecting the interests of the State of Oklahoma.

Feb. 12, 2024.



GENTNER F. DRUMMOND, OBA #16645
Attorney General
GARRY M. GASKINS, II OBA #20212
Solicitor General
OFFICE OF THE ATTORNEY GENERAL
STATE OF OKLAHOMA
313 NE 21st Street
Oklahoma City, OK 73105
(405) 521-3921
(405) 522-4534 (fax)
Gentner.Drummond@oag.ok.gov

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the Entry of Appearance was mailed this 12th day of February 2024, by depositing it in the U.S. Mail, postage prepaid, or by electronic mail to:

Cheryl Plaxico
Plaxico Law Firm, PLLC
923 N. Robinson Ave., 5th Floor
Oklahoma City, OK 73102



Gentner F. Drummond