

Elaine M. Dowling

Attorney at Law

6801 N. Broadway Ext., Ste. 310
Oklahoma City, OK 73116
www.dowlinglawoffice.com

Telephone: (405) 842-8005
Fax: (405) 840-6367
Elaine@dowlinglawoffice.com

To: Oklahoma Counsel of Bond Oversight
From: Elaine M. Dowling
Date: April 25, 2022
Re: Oklahoma Turnpike Authority Line of Credit Application

MEMORANDUM

Before this Council today is the application of the Oklahoma Turnpike Authority (“OTA”) to access a \$200 Million line of credit. This line of credit is intended to be used, essentially, as seed money for a project called Access Oklahoma. It is then expected to be refinanced by subsequent bond offerings ultimately totaling in excess of \$5 BILLION in connection with Access Oklahoma which is the OTA’s latest turnpike construction, maintenance and improvement plan. This line of credit is simply the first small step towards that total \$5 Billion price tag, but as that first step it warrants more attention than the somewhat pro forma application currently before this Council might indicate.

The OTA project, Access Oklahoma, includes a number of turnpike projects:

- Widening the Turner Turnpike between Oklahoma City and Bristow;
- Widening of the Kilpatrick Turnpike between I-40 and I-35;
- Widening of the Will Rogers Turnpike;
- Widening and Expanding the Gilcrease Expressway;
- Improvements to the system, including new interchanges and upgrading electronic toll collection;
- Two segments of the Outer Loop – the East-West Connector and the Tri-City Connector;
- The Southern Extension Turnpike.¹

That last turnpike, the Southern Extension Turnpike, is the subject of this objection. One Turnpike out of this long list may not seem significant when OTA is only seeking access to \$200 million out of a \$5 billion plan; but this one turnpike is one of only two on this list that is a new turnpike that can be expected to generate new revenue.² The point of this objection is to show

¹ Information from the OTA website at: <https://www.accessoklahoma.com/>

² The other is the next to last on the list, the two segments of the Outer Loop.

that this turnpike, the Southern Extension, is outside OTA's statutory authority. There is currently pending, or in process, litigation challenging the statutory authority for this Southern Extension Turnpike in the court system. If this Council allows OTA to access the requested line of credit, and the Court system agrees with the arguments in this Objection that the Southern Extension Turnpike may not legally be built, then the next question becomes how much of Access Oklahoma can be supported without the toll revenue from the Southern Extension, and will the expected bond refinance of this line of credit materialize?

Attached as Exhibit "A" is a screen shot of the Access Oklahoma/OTA website which shows the intended routes for Access Oklahoma Turnpikes. On this map the two turnpikes impacting Norman are marked in blue. The Southern Extension starts at I-40 in the top right hand section of the image and descends to the South through Norman and Noble and then Southwesterly through Slaughterville before terminating at I-35 on the North side of Purcell.

The Outer Loop segments, again depicted in blue on the attached Exhibit "A", start at the other side of the metro, near Mustang, follow I-44 down to Tuttle, and then head East across the river to the North side of Norman at roughly Indian Hills Road.

As you may know, the turnpike process in Oklahoma is fundamentally one of statute. Title 69 of the Oklahoma Statutes creates the Oklahoma Turnpike Authority ("OTA")³ and empowers it to construct, maintain, repair and operate turnpike projects and to issue turnpike revenue bonds.⁴ That authority is not unfettered, however. OTA may only construct and operate turnpikes in locations specifically authorized by statute.⁵ Those locations are specified in 69 O.S. § 1705(e). There are 35 possible Turnpike locations specified, many of which have already been constructed; and a copy of the authorizing Statute is attached as Exhibit "B". However, the Turnpike contemplated by the current OTA expansion program "Access Oklahoma" known as the Southern Extension⁶ is not authorized by any of the 35 possibilities. In fact, there are only two of the 35 possible turnpikes that effect Cleveland County, and they are the Outer Loop (69 O.S. §1705(e)(20)) and the 28th option (69 O.S. §1705(e)(28) – referred to as "Subsection (e)(28)" herein).

The Outer Loop authorizing statute reads as follows:

³ 69 O.S. § 1703.

⁴ 69 O.S. § 1701.

⁵ 69 O.S. §1705(e).

⁶ This turnpike is referred to as the Southern Extension on the Access Oklahoma website. It is an extension of the Kickapoo Turnpike which connects the Turner Turnpike with I-40.

(20) All or any part of an Oklahoma City Outer Loop expressway system beginning in the vicinity of I-35 and the Turner Turnpike and extending west into Canadian County and then south to I-40; and then south and east to I-35 in the vicinity of Moore and Norman; and then extending east and north to I-40 east of Tinker Field; and then extending north to the Turner Turnpike to complete the Outer Loop.

This section authorizes a turnpike that extends no further South than the vicinity of Moore and Norman, at which point it moves East and North to I-40 East of Tinker Field. The proposed Southern Extension terminates at I-35 just North of Purcell – almost 20 miles further South, in a different County and crossing at least three other towns (Noble, Slaughterville and Goldsby).⁷ There is no way a statute that says to go from the vicinity of Moore and Norman then East and North to I-40 east of Tinker Field actually contemplates going South and West to I-35 just outside Purcell instead. So, the Southern Extension cannot be authorized by 69 O.S. §1705(e)(20).

The other provision that authorizes turnpike construction in and around Cleveland County is 69 O.S. §1705(e)(28) or just Subsection (e)(28) which provides as follows:

(28) A new turnpike and bridge or any parts thereof from a point in the vicinity of the city of Mustang southerly across the South Canadian River to the H.E. Bailey Turnpike in the vicinity of the city of Tuttle; and then easterly across the South Canadian River to a point in the vicinity of the city of Norman.

This statute, Subsection (e)(28) moves into Cleveland County from Tuttle, when it moves “easterly across the South Canadian River to a point in the vicinity of the city of Norman”. As shown on Exhibit “C” Highway 37 in Tuttle lines up across the river with Indian Hills Road running along the North edge of Norman. So, this Turnpike description can go straight East across the river to a spot in the vicinity of Norman – right along the Northern border of Norman. There is nothing in this description, however, that suggests that the Turnpike should continue along the Northern border of Norman almost to Lake Thunderbird, and then take a 90 degree turn to the South, run through Norman, through Noble and then angle to the Southwest to go through Slaughterville and finally to rejoin I-35 on the North side of Purcell.

⁷ There are other problems with reliance by OTA on the Outer Loop authorization for the Access Oklahoma Turnpikes including that the Outer Loop has unique bonding requirements that OTA may not be able to comply with, but those are outside the scope of this particular memorandum and are addressed in objection authored by Robert E. Norman. *See*, 69 O.S. §1705(f).

This is a time when a picture is really worth 1,000 words. Take a look at the turnpike courses depicted in Exhibit “B”. Do you see the blue line that goes horizontally across the middle of the map? That is the East-West Connector. Now, look at the blue line running vertically down the page along the East end of the East-West connector. All of that line South of the connector is completely undescribed and unauthorized in the Statute; and it appears to be as long or longer than the Turnpike segment that the statute actually does describe. So, Section 28 isn’t getting OTA through East Norman and down to Purcell either.

Admittedly, the beginning and ending points of turnpikes need only be in the vicinity of the designated location.⁸ However, you cannot claim that Purcell is in the vicinity of North Norman. They are close to 20 miles apart. They are in different Counties, and they aren’t even adjacent cities. Between Norman and Purcell are Goldsby, Noble and Slaughterville. Also, building this long leg South and West into this section conflicts with the specificity of the rest of the description.

There is simply no school of statutory construction that allows for any finding other than that the South Extension is simply not authorized by statute. As the Oklahoma Supreme Court has mentioned before the general rule is that all legislative enactments must be interpreted in accordance with their plain ordinary meaning according to the import of the language used.⁹ Basically that means that if a turnpike is supposed to go North from the Moore Norman area towards Tinker Field, it shouldn’t wind up going South to Purcell. Until a court explains how North means South and going east from Tuttle to the Norman area includes a lengthy dogleg South and west through three other Cities to end at Purcell, the South Extension cannot be lawfully built by OTC nor can it be used to support bonds to refinance the requested line of credit, nor should OTC be using line of credit funds to prepare to build this phase of Access Oklahoma.

This Council’s remit is fairly specific. You are required to determine whether or not debt is being incurred for “Authorized Public Functions or Purposes” which includes functions authorized by law. OAC 90:1-1-3(c) and 90:10-7-3. In this case the Council cannot find that the construction of the South Extension is authorized by statute, and it is therefore not an authorized public function for which the OTA should be incurring debt.

The next hurdle for approval of this application is that Final Approval must be accompanied by a letter from the issuer’s attorney stating that there is no litigation pending or threatened relating to outstanding or proposed obligations or the issuer’s authority to enter into any agreements necessary to complete the proposed transaction. OAC 90:10-3-4(a)(3)(I). As of

⁸ 69 O.S. §1705.1.

⁹ *Applications of Oklahoma Turnpike Authority*, 1954 OK 341, 277 P.2d 176, citing, *Loeffler v. Federal Supply Co.*, 1940 OK 217, 102 P.2d 862.

the date of the hearing on this matter a Petition will either have been filed in the Cleveland County District Court or be in the final stages of preparation seeking a judicial determination that, among other things, the South Extension is not authorized by statute.

In short, until OTA can produce a final order from a court of competent jurisdiction that the Turnpikes it intends to use these funds to build, plan and develop are authorized by statute; this Council should deny any requests to incur debt – either this line of credit or a future bond issue.

EMD
