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2020 APR -3 PM 1:33  
CARROLL COUNTY ARKANSAS  
EASTERN DISTRICT

**IN THE CIRCUIT COURT OF CARROLL COUNTY, ARKANSAS  
CIVIL DIVISION**

**PAUL SUMMERS, as Trustee of the Paul Summers  
Revocable Trust, dated August 19, 2004, on behalf of  
Himself and all other taxpayers similarly situated**

**PLAINTIFF**

**v. CASE NO. 08ECV-18-116**

**OZARK MOUNTAIN SOLID WASTE DISTRICT and  
CARROLL COUNTY TAX COLLECTOR, Kay Phillips**

**DEFENDANTS**

**ATTORNEY GENERAL OF ARKANSAS Leslie Rutledge**

**INTERVENOR**

**ORDER**

On this 6<sup>th</sup> day of March, 2020, comes on before the Court the above-referenced matter for trial. Plaintiff Paul Summers was present and represented by counsel Matt Bishop and Wendy R. Howerton. The Receiver for Ozark Mountain Solid Waste District was present and represented by counsel Mary-Tipton Thalheimer. The Carroll County Tax Collector was present and represented by counsel Nick Mote. The Court, having heard the arguments of counsel, considered the evidence presented, and having considered all other matters properly before the Court, finds as follows:

**FINDINGS OF FACT**

1. The parties stipulated to Exhibit 1, consisting of subparts 1-51; documents relevant to this matter.
2. Ozark Mountain Solid Waste District, formerly Northwest Arkansas Solid Waste District, is a regional solid waste district formed pursuant to Ark. Code Ann. § 8-6-101, *et seq.*
3. In approximately 2005, Ozark Mountain Solid Waste District issued certain tax-exempt bonds. The revenue generated by the bonds was used to purchase a landfill in Baxter County

known as Nabors Landfill and certain assets of a waste hauling company. See Exhibits 1.7, 1.8, 1.35.

4. In 2013, the Arkansas Department of Environmental Quality (ADEQ) obtained responsibility for Nabors Landfill pursuant to an order in the matter of *Arkansas Department of Environment Quality v. Ozark Mountain Solid Waste District*, Baxter County Case No. 03CV-13-4. Exhibit 1-14.

5. In 2014, Bank of the Ozarks, as Trustee for the Bondholders, filed suit against OMSWD for the appointment of a receiver, alleging OMSWD had defaulted on the bonds (the "Pulaski County case"). Exhibit 1.21. ADEQ was permitted to intervene in that case, and Geoffrey Treece was appointed the Receiver. Exhibits 1.26, 1.27. The Receiver, on behalf of the bondholders and ADEQ, ultimately submitted a Report to the Pulaski County Circuit Court which recommended an \$18.00 charge be imposed upon the improved property owners in the six counties that comprise Ozark Mountain Solid Waste District, including Carroll County. The charge would last for twenty (20) years and was estimated to collect over \$1,200,000 per year. Exhibit 1.35. The proceeds of the \$18.00 were to be dedicated to the bondholders and ADEQ with the remainder if any, to go to OMSWD. Exhibits 1.35, 1.36. The Board of OMSWD did not vote for the \$18.00 charge.

6. The Carroll County Tax Collector, at the request of the Receiver and pursuant to the court order in Pulaski County Circuit Court Case No. 60CV-14-4479, began collecting the \$18.00 from the Plaintiffs via the ad valorem tax invoices sent in March 2018 for the 2017 tax year, and has continued to collect each year since that date.

7. The Receiver's Report, Exhibit 1.35, which was adopted and referenced by an order of the Pulaski County Circuit Court in Case No. 60CV-14-4479, states that Nabors Landfill has been

closed since 2012, and the assets of the waste hauling company purchased with the bond revenue have been sold. Melinda Caldwell, acting as Director of OMSWD since approximately 2011, testified to the closure of Nabors Landfill in 2012.

8. Tim McKinney, Mayor of Berryville, Arkansas since 1990 and by statute a member of the OMSWD Board of Directors, has also been an officer in Carroll County Solid Waste Authority since its formation in the early 1990s. Mr. McKinney testified that Carroll County Solid Waste Authority had been hauling and disposing the solid waste of Carroll County residents since its formation. Mr. McKinney also testified that Carroll County Solid Waste Authority has charged Carroll County residents for this service throughout its existence. Mr. McKinney testified that Plaintiff's Exhibit 1, the named Plaintiff's City of Berryville utility bill, reflected this charge by the Carroll County Solid Waste Authority for the solid waste collection and disposal services provided by Carroll County Solid Waste Authority.

9. Exhibit 1.49 is an October 2, 2019, Minute Order of the Arkansas Pollution Control & Ecology Commission authorizing the creation of the Carroll County Solid Waste District. Since the creation of the Carroll County Solid Waste District, Carroll County is no longer part of Ozark Mountain Solid Waste District.

10. Melinda Caldwell, Director of OMSWD, testified OMSWD's actions included administering recycling grants to the counties and cities that comprise OMSWD, administering waste tire grants, licensing waste haulers, and authorizing certificates of need for transfer stations.

11. Melinda Caldwell further testified the \$18.00 charge collected from Carroll County improved property owners is not used to provide solid waste collection and disposal services to Carroll County residents.

### CONCLUSIONS OF LAW

Based on the foregoing findings of fact, the Court makes the following conclusions of law:

12. OMSWD and the Receiver assert this lawsuit constitutes a collateral attack on the Orders of the Pulaski County case. The Court has previously addressed this issue in response to Motions to Dismiss filed by Defendants and its Order of December 11, 2018, and those findings are re-incorporated as if fully set forth herein. The Court finds the Pulaski County case is distinguishable from this matter. The Pulaski County case involved an attempt to collect alleged debt owed by OMSWD as an entity by Bank of the Ozarks, as Trustee for the bondholders, and ADEQ. The matter before this Court involves OMSWD's authority to charge Carroll County improved property owners, the Plaintiffs, the \$18.00 pursuant to Ark. Code Ann. § 8-6-714(d). Plaintiffs herein were not parties to the Pulaski County case. As a result, the Court finds this action is not a collateral attack on orders issued in the Pulaski County case.

13. OMSWD and the Receiver argue that Ark. Code Ann. § 8-6-714(d) authorizes the \$18.00 charge upon Carroll County residents. Ark. Code Ann. § 8-6-714(d) states: "The board may levy a service fee on each residence or business for which the board makes solid waste collection or disposal services available." The Court finds that under the plain meaning of the phrase "makes solid waste collection or disposal services available," OMSWD is not engaged in making solid waste or disposal services available to the Plaintiffs. As a result, OMSWD is not authorized by Ark. Code Ann. § 8-6-714(d) to impose the \$18.00.

14. The \$18.00 is not directed toward any services provided by OMSWD, but instead is directed to pay ADEQ and bondholders of OMSWD. Ark. Code Ann. § 8-6-714(d) does not authorize the imposition of a charge for the payment of debt.

15. The improved property owners of Carroll County are currently paying Carroll County Solid Waste Authority and now Carroll County Solid Waste District for solid waste collection and disposal services. It would be an absurd result to require the property owners to pay both OMSWD and Carroll County Solid Waste Authority/District for services provided by Carroll County Solid Waste Authority/District.

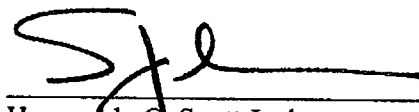
16. This Court is not bound by OMSWD or its Receiver's characterization of the \$18.00 as a fee. In order to be a fee, a governmental levy "must be fair and reasonable and bear a reasonable relationship to the benefits conferred on those receiving the services." *City of Marion v. Baioni*, 312 Ark. 423, 425, 850 S.W.2d 1 (1993). As the \$18.00 is not being used to provide services, but to pay debt, it cannot be considered a fee, and is a tax. OMSWD does not have statutory taxing authority.

17. Amendment 65 to the Arkansas Constitution authorizes the issuance of revenue bonds by governmental entities such as OMSWD, and the bonds at issue herein are "revenue bonds" as defined by Amendment 65. Amendment 65 states that payment of revenue bonds from taxes is prohibited. The \$18.00 is a tax and thus violates Amendment 65.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

- a. The \$18.00 imposed upon Plaintiff is an illegal exaction pursuant to Article 16, § 13 of the Arkansas Constitution, for the reasons set forth herein;
- b. The Court has previously ordered the Receiver not to distribute the proceeds of the \$18.00. That Order shall remain in effect pending further orders of this Court;
- c. Pending the expiration of Defendants' time to appeal or the resolution of an appeal of this decision by Defendants, the Tax Collector shall continue to collect the \$18.00

and transmit same to the Receiver as before. The Receiver shall continue to hold such proceeds pending further orders of this Court.

 4-3-20  
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Honorable C Scott Jackson,  
Circuit Judge