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David M. Winfrey

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JURISDICTION OVER OIL AND GAS CONSERVATION MATTERS: OKLAHOMA CORPORATION COMMISSION VERSUS DISTRICT COURT

I. INTRODUCTION

Although our society has traditionally been suspicious of administrative agencies and administrative adjudication,¹ agency proceedings are becoming unavoidable. The proliferation of agency adjudication in America over the past few decades has created an "administrative state."² Agencies in Oklahoma, including the Oklahoma Corporation Commission (the Commission), are also experiencing increased participation in government.

The Commission has broad subject matter jurisdiction, including jurisdiction over most oil and gas conservation matters.³ The expansion of the Commission's exclusive jurisdiction has restricted the role of the Oklahoma district courts⁴ and created the need for a clearer delineation of the jurisdictional boundaries between the courts and the Commission.⁵ The Oklahoma Supreme Court has recently articulated a manageable framework which litigants can use to determine whether the Commission

1. R. LORCH, *DEMOCRATIC PROCESS AND ADMINISTRATIVE LAW* 11 (1969).

2. R. RABIN, *PERSPECTIVES ON THE ADMINISTRATIVE PROCESS* 1 (1979).

3. OKLA. STAT. tit. 17, § 52 (1981).

4. See *infra* notes 16-19 and accompanying text.

5. In a dispute over the Commission's jurisdiction to interpret its previous order, Justice Opala stated that the boundary line separating district court and Commission jurisdiction is one plagued by the lack of an articulate line of demarcation. *Tenneco Oil Co. v. El Paso Natural Gas Co.*, 687 P.2d 1049, 1057 (Okla. 1984) (Opala, J., dissenting). See generally Dancy & Dancy, *Regulation of the Oil and Gas Industry by the Oklahoma Corporation Commission*, 21 TULSA L.J. 613 (1986); Comment, *Interpretation of Corporation Commission Orders: The Dichotomous Court/Agency Jurisdiction*, 8 OKLA. CITY U.L. REV. 311 (1983); Note, *Subject Matter Jurisdiction of the Oklahoma Corporation Commission: Tenneco Oil Co. v. El Paso Natural Gas Co.*, 19 TULSA L.J. 465 (1984). Although Oklahoma has not yet had a case of attorney malpractice brought because of an attorney's improper selection of a tribunal, other states have recognized such actions. See R. MALLIN & V. LEVIT, *LEGAL MALPRACTICE* § 569 (2d ed. 1981). Malpractice actions based upon the running of the statute of limitations may also result as a consequence of improper jurisdictional selections. See *id.* See also D. MEISELMAN, *ATTORNEY MALPRACTICE, LAW AND PROCEDURE* § 5:13 (1980).

or the district court has jurisdiction over oil and gas conservation matters: the Commission has exclusive jurisdiction over all oil and gas conservation matters which affect the public interest,⁶ while the district court has original jurisdiction over purely private oil and gas disputes,⁷ as well as the power to review jurisdictional disputes.⁸

II. AN OVERVIEW OF THE COMMISSION

Several factors play a role in the determination of the Commission's jurisdiction over oil and gas matters. Article IX of the Oklahoma Constitution gives the Commission the status of a court of record vested with judicial powers.⁹ Although it is not subject to the notice and hearing requirements of the Oklahoma Administrative Procedures Act,¹⁰ the Commission has promulgated its own comprehensive set of practice and procedure rules.¹¹ In addition, the Commission possesses both administrative and legislative powers.¹²

The Commission derives its jurisdictional powers from two sources. The Oklahoma Constitution expressly grants the Commission jurisdiction over intrastate transportation and transmission companies.¹³ Through legislative enactment,¹⁴ the Commission also has jurisdiction over oil and gas conservation matters.¹⁵

6. See *Tenneco Oil Co.*, 687 P.2d at 1053.

7. *Id.*

8. *Woods Petroleum Corp. v. Sledge*, 632 P.2d 393, 396 (Okla. 1981).

9. OKLA. CONST. art. IX, § 19; *St. Louis & S.F. Ry. v. State*, 116 Okla. 95, 97, 244 P. 440, 442 (1925).

10. OKLA. STAT. tit. 75, § 250.4.A.2 (Supp. 1987). The Commission is required, however, to comply with the filing and publication requirements for rules. *Id.*

11. The Corporation Commission has promulgated rules which govern practice and procedure before the Commission. OKLA. CORP. COMM'N, RULES OF PRACTICE (Oil-Law Records Corp. 1985). The Commission has traditionally been considered efficient in its handling of oil and gas conservation disputes. See DeBois, *Practice and Procedure Before the Corporation Commission of the State of Oklahoma*, 7 OKLA. L. REV. 173, 188 (1954). "While the Commission usually has a very heavy docket, matters are expeditiously heard and disposed of and in view of the preferential right before the Supreme Court, appeals to the Supreme Court are usually passed upon in a comparatively short period of time." *Id.*

12. See *Dancy & Dancy*, *supra* note 5, at 617; e.g., OKLA. STAT. tit. 52, §§ 241, 243 (1981).

13. OKLA. CONST. art. IX, § 18.

14. The legislature has constitutional authority to "alter, amend, revise, or repeal" the Commission's power. OKLA. CONST. art. IX, § 35.

15. OKLA. STAT. tit. 17, § 52 (1981 & Supp. 1987). The legislature has on numerous occasions expanded the Commission's jurisdiction in this area of the law. See, e.g., OKLA. STAT. tit. 52, §§ 541-47 (Supp. 1987) (power to promulgate rules for payment of oil and gas proceeds); OKLA. STAT. tit. 52, §§ 601-14 (Supp. 1987) (energy resource conservation).

A. Original Jurisdiction

District courts are courts of general jurisdiction with power to resolve all justiciable matters.¹⁶ On its face, the Oklahoma Constitution, in section seven of Article VII, appears to give the district courts unlimited jurisdiction. However, the language of section seven excludes from district court jurisdiction those matters which are by statute delegated to another tribunal.¹⁷ One of those matters which has been delegated is the area of oil and gas conservation. Thus, "the Commission has the power to regulate the drilling of wells into the common source of supply" because this production is a matter of oil and gas conservation.¹⁸ Any oil and gas conservation matter which is not delegated to the Commission, however, remains within the original jurisdiction of the district courts.¹⁹

The original jurisdiction of the Commission is limited to those matters which are expressly or through "necessary implication" delegated to it.²⁰ Therefore, it has no jurisdiction over those matters which are outside the regulatory policy of oil and gas conservation as defined by the legislature.²¹ The two conservation schemes most often employed by the Commission are drilling and spacing units and forced pooling orders.²² The Commission's limited jurisdiction is in fact quite broad,²³ and the legislature has continued to expand the Commission's authority within the area of oil and gas conservation.²⁴

16. OKLA. CONST. art. VII, § 7.

17. *Id.* Article VII provides in relevant part: "The District Court shall have unlimited original jurisdiction of all justiciable matters, except as otherwise provided in this Article, and such powers of review of administrative action as may be provided by statute." *Id.*

18. *See Kuykendall v. Helmerich & Payne, Inc.*, 741 P.2d 869, 874 (Okla. 1987) (citing *Patterson v. Stanolind Oil & Gas Co.*, 182 Okla. 155, 77 P.2d 83, *appeal dismissed*, 305 U.S. 376 (1939)).

19. *See Energy Transp. Sys. v. Kansas City S. Ry.*, 638 P.2d 459, 461 (Okla. 1981).

20. *Merritt v. Corporation Comm'n*, 438 P.2d 495, 497 (Okla. 1968) (citing *Kingwood Oil Co. v. Hall-Jones Oil Corp.*, 396 P.2d 510 (Okla. 1964)); OKLA. STAT. tit. 17, § 153 (1981).

21. *Merritt*, 438 P.2d at 497; *Kingwood Oil Co. v. Hall-Jones Oil Corp.*, 396 P.2d 510, 513 (Okla. 1964). Types of actions over which the Commission has no jurisdiction are tort actions, lien foreclosures, money judgments, and negative injunctions. Comment, *supra* note 6, at 324.

22. OKLA. STAT. tit. 52, §§ 87.1 (1981 & Supp. 1987); *see also Dancy & Dancy*, *supra* note 5, at 620-49.

23. The Commission has exclusive authority and responsibilities over "conservation of oil and gas and the drilling and operating of oil and gas wells and the construction and regulation of oil and gas pipelines." OKLA. STAT. tit. 17, § 52 (1981 & Supp. 1987).

24. In 1907, the Oklahoma Legislature passed the Pipe Lines Act, ch. 67, 1907 Okla. Sess. Laws 586 (codified as amended at OKLA. STAT. tit. 52, §§ 1-10 (1981)), which regulated the nature, construction, and operation of natural gas pipelines. In 1913 and 1915, the legislature enacted laws which defined the drilling and ownership rights to gas and gave the Commission the authority to prevent waste of gas, including the regulation of the amount of gas taken from a common source. Natural Gas—Ownership Defined and Output Restricted, ch. 198, 1913 Okla. Sess. Laws 439; Natural Gas—Waste, ch. 197, 1915 Okla. Sess. Laws 326 (both codified as amended at OKLA. STAT. tit. 52, §§ 231-39 (1981)). The legislature also gave the Commission the power to enforce most of the

B. Appellate Jurisdiction

Once the Commission has issued an order, the question arises as to which tribunal has the authority to review the order. District courts can review Commission orders for the sole purpose of determining whether the Commission had jurisdiction to issue the order.²⁵ In *Gulfstream Petroleum Corp. v. Layden*,²⁶ a lessee sought review in the district court of the Commission's jurisdiction to issue a pooling order claiming that

provisions of the Production and Transportation Act of 1913. Natural Gas—Regulation of Production and Transportation, ch. 99, 1913 Okla. Sess. Laws 166 (codified as amended at OKLA. STAT. tit. 52, §§ 21-34 (1981)). In 1915, the legislature further expanded the Commission's authority to include the prevention of waste by regulating the taking of crude oil from common sources of supply. Oil and Gas—Production and Sale—Powers of Corporation Commission, ch. 25, 1915 Okla. Sess. Laws 28 (codified at OKLA. STAT. tit. 52, §§ 271-79 (1981)).

In 1917, the Oklahoma Legislature empowered the Commission to establish an Oil and Gas Department and granted the Commission exclusive power over oil and gas conservation, drilling and operation of oil and gas wells, and construction and regulation of oil and gas pipelines. Oil and Gas—Department—Corporation Commission—Conservation Agent, ch. 207, 1917 Okla. Sess. Laws 385 (codified at OKLA. STAT. tit. 17, §§ 51, 52 (1981)).

In 1933, the legislature passed oil and gas conservation laws which were later designated as the Oklahoma Oil and Gas Conservation Act. Proration—Petroleum and Natural Gas, ch. 131, 1933 Okla. Sess. Laws 278 (current version at OKLA. STAT. tit. 52, § 81-287.15 (1981)). This act authorized the Commission to prevent waste of oil and gas in both transportation and production, and to protect the correlative rights of interested parties in the orders handed down by the Commission. The legislature also granted the Commission various powers for the enforcement of its orders, rules, and regulations. Proration—Petroleum and Natural Gas, ch. 131, 1933 Okla. Sess. Laws 278, 284 (codified at OKLA. STAT. tit. 52, § 97 (1981)).

In 1935, the legislature dealt with the pervasive waste of oil created by drilling competition. Oil and Gas, ch. 59, 1935 Okla. Sess. Laws 232, *repealed and replaced by* Oil and Gas, ch. 3, 1947 Okla. Sess. Laws 326 (codified at OKLA. STAT. tit. 52, §§ 86.1-86.5 (1981)). The Commission's power was expanded even further in 1945, when the legislature allowed the Commission to issue forced pooling orders, Oil and Gas, ch. 3, 1945 Okla. Sess. Laws 155, *repealed by* Oil and Gas, ch. 3, 1947 Okla. Sess. Laws 327 (codified at OKLA. STAT. tit. 52, §§ 86.1-86.5 (1981)), and provide for the unitized management of common sources of supply. Act approved April 19, 1945, ch. 3b, 1945 Okla. Sess. Laws 162 (current version at OKLA. STAT. tit. 52, § 287.1 (1981)). The forced pooling laws were repealed in 1947, but another act enabled the Commission to continue to order forced pooling. Act approved April 29, 1947, ch. 3a, 1947 Okla. Sess. Laws 328 (codified as amended at OKLA. STAT. tit. 52, § 87.1 (1981)). The unitized management laws were repealed and replaced in 1951. Act approved May 26, 1951, ch. 3a, 1951 Okla. Sess. Laws 136 (codified at OKLA. STAT. tit. 52, § 287.1-287.15 (1981)).

In 1981, the Commission's authority was extended to cover the removal of surface trash and debris, operating equipment, production and storage structures, and other supplies from the well site. Oil and Gas—Garbage and Refuse—Rules and Regulations, ch. 90, 1981 Okla. Sess. Laws 147 (codified at OKLA. STAT. tit. 17, § 53.1, 53.2 (1981)). Although this evolutionary sketch of the Commission is not exhaustive, it highlights areas which are most often the subject of the Commission's conservation-related police powers.

25. *Woods Petroleum Corp. v. Sledge*, 632 P.2d 393, 396 (Okla. 1981); *State ex rel. Comm'r's of the Land Office v. Corporation Comm'n*, 590 P.2d 674, 677 (Okla. 1979); *see Shell Oil Co. v. Keen*, 355 P.2d 997, 1000 (Okla. 1960). Void judgments are jurisdictionally defective and thus can be attacked collaterally. *Chancellor v. Tenneco Oil Co.*, 653 P.2d 204, 206 (Okla. 1982).

26. 632 P.2d 376 (Okla. 1981).

the Commission lacked jurisdiction to render the order because no spacing order was in effect.²⁷ The Oklahoma Supreme Court held that a Commission order which involves jurisdictional facts may be properly challenged by collateral attack in a district court,²⁸ but a district court's review of a Commission order cannot go beyond the jurisdictional inquiry.²⁹ Generally, however, collateral attacks on Commission orders are not allowed.³⁰ Thus, a party who is adversely affected by a valid order of the Commission may not collaterally attack the order in district court or in a subsequent Commission proceeding.³¹ Upon the aggrieved person's application, however, the Commission may repeal, amend, modify, or supplement its previous order.³²

Although the limited language of Section 112 of Title 52,³³ which defines the Commission's power, does not give the Commission the

27. *Id.* at 377.

28. *Id.* at 378. In *Gulfstream*, the court's determination that jurisdictional facts were involved was premised upon the statutory interpretation of the 1977 version of OKLA. STAT. tit 52, § 87.1. The question whether the Commission had the jurisdiction to render the forced pooling order turned on "whether the entry of a spacing order is a jurisdictional prerequisite to the entry of a pooling order." *Id.* The court interpreted Section 87.1 as making the entry of a forced pooling order mandatory. Therefore, since the procedure was mandatory and not merely directory, the Commission's failure to comply with procedure was a jurisdictional defect subject to collateral attack. *Id.* at 378-79.

29. *Id.* at 378. The Commission's jurisdiction may be challenged on three grounds: (1) jurisdiction over the parties, (2) jurisdiction over the subject matter, or (3) jurisdiction to issue a specific type of order. *Id.* Collateral attacks on jurisdiction are permissible only if the face of the order reveals a jurisdictional defect. *Miller v. Wenexco, Inc.*, 743 P.2d 152, 155 (Okla. Ct. App. 1987); *Mullins v. Ward*, 712 P.2d 55, 59 n.7 (Okla. 1985).

30. OKLA. STAT. tit. 52, § 111 (1981) provides:

No collateral attack shall be allowed upon orders, rules and regulations of the Commission made hereunder, but the sole method of reviewing such orders and inquiring into and determining their validity, justness, reasonableness or correctness shall be by appeal from such orders, rules or regulations to the Supreme Court. On appeal every such order, rule or regulation shall be regarded as prima facie, valid, reasonable and just. No court of this state except the Supreme Court, and it only on appeal, as herein provided, shall have jurisdiction to review, reverse, annul, modify or correct any order, rule, or regulation of the Commission within the general scope of its authority herein or to enjoin, restrain or suspend execution or operation thereof, provided that writs of mandamus and prohibition shall lie from the Supreme Court to the Commission in all cases where such writs, respectively, would under like circumstances lie to any inferior court or officer.

Id. The Declaratory Judgments Act also prohibits district courts from declaring the rights of parties to a commission order. OKLA. STAT. tit. 12, §§ 1651, 1657 (1981); *Chancellor v. Tenneco Oil Co.*, 653 P.2d 204, 207 (Okla. 1982). See also OKLA. CONST. art. IX, § 20 which provides: "No court of this State, except the Supreme Court, shall have jurisdiction to review, affirm, reverse, or remand any action of the Corporation Commission . . . or . . . enjoin, reverse, or interfere with the Corporation Commission in the performance of its official duties"

31. *Nilsen v. Ports of Call Oil Co.*, 711 P.2d 98, 101 (Okla. 1985); *McDaniel v. Moyer*, 662 P.2d 309, 312 (Okla. 1983); *Woods Petroleum Corp. v. Sledge*, 632 P.2d 393, 396 (Okla. 1981).

32. OKLA. STAT. tit. 52, § 112 (1981).

33. *Id.*

power of clarification,³⁴ it is well settled that the Commission has this right.³⁵ The right of clarification is limited, however, to orders which further the public interest of conservation.³⁶ In *Southern Union Production Co. v. Corporation Commission*,³⁷ a pooled interest owner requested the Commission to clarify its previous forced pooling order with respect to the rights of the parties.³⁸ Southern Union challenged the Commission's jurisdiction to enter a subsequent order interpreting the effect of the order on title to land.³⁹ The Oklahoma Supreme Court found that the dispute was not one of public interest and prohibited the Commission from determining the effect of its order on title to land unless necessarily incident to the exercise of its statutory powers of conservation.⁴⁰ Thus, the court only partially restricted the Commission's authority.

The extent of the Commission's authority to *modify* its previous order has come under attack as well, even though that power is expressly granted in Section 112.⁴¹ This authority has been challenged on the basis that it is a collateral attack upon a prior order.⁴² If, however, there is a "change in conditions, or a change in knowledge of conditions," between two Commission orders, the Commission has the jurisdiction to modify the previous order.⁴³ A Commission order, therefore, though not appealed, may be modified by the Commission if the aggrieved party establishes the requisite evidence of changed conditions or newly acquired knowledge, as long as the modification is not a prohibited collateral attack.⁴⁴

Although past decisions of the supreme court served to clarify certain aspects of the Commission's jurisdiction, they did not clearly outline

34. "Any person affected by any legislative or administrative order of the Commission shall have the right at any time to apply to the Commission to repeal, amend, modify, or supplement the same." *Id.*

35. *Nilsen v. Ports of Call Oil Co.*, 711 P.2d 98, 102-03 (Okla. 1985); *Cabot Carbon Co. v. Phillips Petroleum Co.*, 287 P.2d 675, 679 (Okla. 1955). *Cf.* *Samson Resources Co. v. Oklahoma Corp. Comm'n*, 742 P.2d 1114, 1116 (Okla. 1987) (jurisdiction properly before Commission because Commission was attempting to clarify order).

36. *See Nilsen*, 711 P.2d at 102-03.

37. 465 P.2d 454 (Okla. 1970).

38. *Id.* at 455-57.

39. *Id.*

40. *Id.* at 458.

41. *See supra* note 34 for the relevant text of section 112.

42. *Union Texas Petroleum v. Corporation Comm'n*, 651 P.2d 652, 659 (Okla. 1981), *cert. denied*, 459 U.S. 837 (1982); *Marlin Oil Corp. v. Corporation Comm'n*, 569 P.2d 961, 964-65 (Okla. 1977); *Phillips Petroleum Co. v. Corporation Comm'n*, 482 P.2d 607, 610-11 (Okla. 1971); *In re Bennett*, 353 P.2d 114, 120 (Okla. 1960).

43. *Marlin Oil Corp.*, 569 P.2d at 962-63.

44. *See Phillips Petroleum Co.*, 461 P.2d at 599.

the distinctions between the powers of the Commission and the district courts. Recognizing the need for a more distinct line of demarcation between the two tribunals, the Oklahoma Supreme Court established the Commission's jurisdictional parameters in *Tenneco Oil Co. v. El Paso Natural Gas Co.*⁴⁵

III. THE SCOPE OF THE COMMISSION'S JURISDICTION

A. *Tenneco Oil Co. v. El Paso Natural Gas Co.*

Tenneco sued El Paso in district court to quiet title in certain oil and gas leases.⁴⁶ The dispute between the parties arose from the terms of a private operating agreement into which the parties had entered pursuant to a forced pooling order. The trial court granted judgment in favor of Tenneco.⁴⁷ El Paso appealed, and the Oklahoma Supreme Court reversed the court of appeals with directions to dismiss for lack of subject matter jurisdiction. The supreme court then granted rehearing, vacated its previous reversal, and affirmed the trial court's judgment.⁴⁸

The Oklahoma Supreme Court used *Tenneco* as an avenue for clarifying the jurisdictional roles of the Commission and the district courts. The court adopted as the jurisdictional dividing line the public rights/private rights distinction enunciated by the United States Supreme Court in the plurality opinion of *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*⁴⁹ In *Marathon*, four Justices agreed that only controversies which arise "between the government and others" can be removed from article III courts and delegated to administrative agencies.⁵⁰ Controversies between individuals, or private rights disputes, must remain within the province of an article III court.⁵¹

Jurisdiction over oil and gas disputes is similarly determined through the public rights doctrine. The Commission has exclusive authority to hear disputes which affect the public's interest in the conservation of oil and gas.⁵² Matters which involve purely private disputes, such as contract interpretation, may be litigated in district court.⁵³ However,

45. 687 P.2d 1049 (Okla. 1984).

46. *Id.* at 1050.

47. *Id.* at 1052.

48. *Id.*

49. 458 U.S. 50 (1982) (plurality opinion; four Justices joined in this analysis); see also *Crowell v. Benson*, 285 U.S. 22, 51-55 (1932).

50. *Marathon*, 458 U.S. at 69-70.

51. See *Tenneco*, 687 P.2d at 1053.

52. OKLA. STAT. tit. 17, § 52 (1981 & Supp. 1987); *Stipe v. Theus*, 603 P.2d 347 (Okla. 1979).

53. Individuals may enter into a private operating agreement made pursuant to a Commission

if a private action requires review of a Commission order, it is a collateral attack and thus not a justiciable matter for the district court.⁵⁴ The Oklahoma Supreme Court's adoption of the public rights/private rights distinction for the allocation of jurisdiction in oil and gas conservation matters provides a manageable framework to guide litigants in determining the tribunal before which they should proceed.

B. *Concurrent and Exclusive Jurisdiction*

True primary jurisdiction exists when both court and agency have concurrent jurisdiction over the subject matter, and the court has the discretion to allow the agency to make a preliminary determination of the matter prior to final determination by the district court.⁵⁵ The provisions of the Oil and Gas Conservation Act⁵⁶ do not expressly preserve jurisdiction for the district court on any matter except contempt hearings.⁵⁷ In addition, judicial review of the Commission's orders is vested solely in the Oklahoma Supreme Court.⁵⁸ Further, Commission orders cannot be collaterally attacked in district court.⁵⁹ Thus, it is the legislature's clear intent that the district courts and the Commission are not to have concurrent jurisdiction in the area of oil and gas conservation matters.⁶⁰

Despite this clear legislative directive, the Oklahoma Supreme Court indicated in *Stipe v. Theus*⁶¹ that the Commission and the district courts

order as long as the contract does not affect the public's interest in oil and gas conservation. Therefore, individuals may not enter into private agreements which allow waste or diminish correlative rights. *Tenneco*, 687 P.2d at 1053. *Nilsen v. Ports of Call Oil Co.*, 711 P.2d 98, 103 (Okla. 1985); *Southern Union Prod. Co. v. Corporation Comm'n*, 465 P.2d 454, 458 (Okla. 1970).

54. *Pelican Prod. Corp. v. Wishbone Oil & Gas, Inc.*, 746 P.2d 209 (Okla. Ct. App. 1987).

55. K. DAVIS, *ADMINISTRATIVE LAW TEXT*, § 19.01 (3d ed. 1972).

56. OKLA. STAT. tit. 52, §§ 81-287.15 (1981 & Supp. 1987).

57. *See, e.g.*, OKLA. STAT. tit. 52, § 247 (1981).

58. OKLA. STAT. tit. 52, §§ 86.5, 111, 112, 113, 136, 242, 260.10, 277, 287.6 (1981).

59. OKLA. STAT. tit. 52, § 111 (1981). *See supra* note 30 for the text of section 111.

60. The problem which arises from concurrent jurisdiction is that the two forums may reach conflicting results, rendering enforcement impossible. Schwartz, *Primary Administrative Jurisdiction and the Exhaustion of Litigants*, 41 GEO. L.J. 495, 97 (1953) (quoting Justice White's opinion in *Texas & P. Ry. Co. v. Abilene Cotton Oil Co.*, 204 U.S. 426 (1907)). Additionally, the Oklahoma Supreme Court has had occasion to resolve jurisdictional disputes between Oklahoma agencies and has thus far reaffirmed the Commission's exclusive jurisdiction over oil and gas conservation matters. *See, e.g.*, *State ex rel. Pollution Control Coordinating Bd. v. Oklahoma Corp. Comm'n*, 660 P.2d 1042 (Okla. 1983) ("Commission has exclusive jurisdiction over slush pit pollution"); *Matador Pipelines, Inc. v. Oklahoma Water Resources Bd.*, 742 P.2d 15, 18 (Okla. 1987) (Board and Commission do not have concurrent jurisdiction over pollution resulting from crude oil running into state waters).

61. 603 P.2d 347 (Okla. 1979).

have a conflict of jurisdiction with respect to the determination of development costs.⁶² The authority to determine development costs of a Commission pooling order, though vested in the Commission, also remains within the general jurisdiction of the district court because only the district court can provide complete relief.⁶³ Thus, under *Stipe*, the Commission's jurisdiction over the determination of reasonable development costs is concurrent with the jurisdiction of the district courts.

Because the district courts have no jurisdiction over oil and gas conservation issues, the Commission's authority in this area is considered primary exclusive jurisdiction.⁶⁴ Conservation issues are brought within the special competence and expertise of the Commission through the Oil and Gas Conservation Act,⁶⁵ with judicial review available only to the Oklahoma Supreme Court.⁶⁶ Jurisdiction of the district courts over oil and gas conservation issues is limited to determining whether the Commission had subject-matter jurisdiction.⁶⁷ Primary exclusive jurisdiction is preferable to concurrent jurisdiction for a variety of reasons: prevention of undue judicial interference with the Commission,⁶⁸ expertise of the Commission,⁶⁹ uniformity of results,⁷⁰ and expeditiousness of administrative review.⁷¹

IV. RECENT APPLICATIONS OF THE *TENNECO* FRAMEWORK

Tenneco established the framework within which the Oklahoma Supreme Court would operate in determining the jurisdictional roles of the Commission and the district courts in oil and gas issues. The decision, however, was far from comprehensive. The court did not specifically define a public right; therefore, litigation over jurisdictional limits has continued.

62. *Id.* at 349.

63. *Id.* at 350.

64. *Samson Resources Co. v. Corporation Comm'n*, 702 P.2d 19, 25 (Okla. 1985).

65. OKLA. STAT. tit. 52, §§ 81-153 (1981 & Supp. 1987).

66. OKLA. STAT. tit. 17, § 52 (1981).

67. *See supra* note 29.

68. *See* Convisser, *Primary Jurisdiction: The Rule and Its Rationalizations*, 65 YALE L.J. 315 (1956).

69. Botein, *Primary Jurisdiction: The Need for Better Court/Agency Interaction*, 29 RUTGERS L. REV. 867, 880 (1976). While agency experience is one justification for jurisdiction, "expertise should not keep any talismanic quality. Instead, a court should . . . discover whether an agency has real competence in a particular case." *Id.*

70. *Id.* at 880.

71. *Id.* One authority eschews the arguments of expertise, uniformity, and administrative efficiency and looks solely to statutory intent as a justification of an agency's exclusive jurisdiction. Jaffe, *Primary Jurisdiction*, 77 HARV. L. REV. 1037, 1041 (1964).

For example, questions remain with respect to jurisdiction over conflicting Commission orders. In *Drake v. Southwest Davis Unit*,⁷² the Commission's unitization order allegedly conflicted with a prior drilling and spacing order. The question presented on appeal was whether the district court has jurisdiction to resolve a conflict between two orders issued by the Commission. The court found that the district court action would be a prohibited collateral attack.⁷³ The district court cannot resolve conflicts between Commission orders because the analysis would require the court to review both orders, thus impinging upon the exclusive jurisdiction of the Commission.⁷⁴ The enforcement of a Commission order remains within the district court's jurisdiction, however, as long as enforcement does not require review of the order.⁷⁵ Thus, when a party wants conflicting orders reviewed, the litigant must proceed before the Commission, and appeal is made to the supreme court.⁷⁶

The supreme court has continued to clarify the Commission's authority in cases which have arisen since *Tenneco*. The Commission has authority to determine the continuing effect of its orders.⁷⁷ In addition, the Commission can issue *nunc pro tunc* orders to correct typographical errors while the case is pending on appeal in the supreme court, as long as the order will not materially affect the rights of the parties on appeal.⁷⁸ Jurisdiction to hear due process challenges to Commission orders, however, remains in the district court.⁷⁹

The court has also reaffirmed the use of the public rights/private rights distinction in defining jurisdictional boundaries. In *Leede Oil & Gas v. Corporation Commission*,⁸⁰ three oil companies who were parties to an operating agreement brought a breach of contract action against Leede Oil, the unit operator. The appellees alleged that Leede used overpriced equipment and received kickbacks from the equipment supplier. The court applied the public rights doctrine and found that the dispute involved a private right; therefore, the district court had jurisdiction to adjudicate the dispute.⁸¹

72. 698 P.2d 15 (Okla. 1985).

73. *Id.* at 17.

74. *Id.*

75. *Id.*

76. *Id.*

77. *Nilsen v. Ports of Call Oil Co.*, 711 P.2d 98 (Okla. 1985).

78. *Hair v. Oklahoma Corp. Comm'n*, 740 P.2d 134 (Okla. 1987).

79. *See Harry R. Carlile Trust v. Cotton Petroleum*, 732 P.2d 438, 441 & n.8 (Okla. 1986), *cert. denied*, 107 S. Ct. 3232 (1987).

80. 747 P.2d 294 (Okla. 1987).

81. *Id.*

Similarly, in *Samson Resources Co. v. Oklahoma Corporation Commission*,⁸² the court applied the public rights doctrine to an election dispute⁸³ between parties to a pooling order. Although the Commission has no jurisdiction over private interest issues, the Commission had jurisdiction over this election dispute because it was merely clarifying the portion of its order which specified how elections to participate should be made.⁸⁴

The most recent treatment of the relationship between the Commission and the district court was an appellate court case, *Pelican Production Corp. v. Wishbone Oil and Gas, Inc.*⁸⁵ Pelican applied to the Commission for a shut-in order prohibiting Wishbone from producing from the Red Fork sand.⁸⁶ The Commission denied the shut-in order on the ground that there was insufficient evidence to support a finding that Wishbone was producing from that formation.⁸⁷ Pelican responded by bringing an action for conversion in district court. The district court dismissed the action because it lacked subject matter jurisdiction to determine in which formations Wishbone's wells were completed.⁸⁸ Pelican argued that the district court erred because the court had jurisdiction to hear tort cases;⁸⁹ however, before the district court can hear an action for conversion of hydrocarbons, the Commission must determine that the defendant is violating a drilling and spacing order.⁹⁰ Thus, Pelican was actually seeking review of the Commission's determination that Wishbone's wells were not producing from the Red Fork.⁹¹ The appellate court determined that Pelican was collaterally attacking the Commission's order and therefore affirmed the trial court's dismissal of the conversion action.⁹²

V. CONCLUSION

The Oklahoma Supreme Court has set standards for determining

82. 742 P.2d 1114 (Okla. 1987).

83. An election to participate is "[a] means of choosing between options open to owners of pooled interests by the terms of a compulsory pooling or unitization statute." WILLIAMS AND MEYERS, *MANUAL OF OIL AND GAS TERMS* 301 (7th ed. 1987).

84. *Samson*, 742 P.2d at 1116.

85. 746 P.2d 209 (Okla. Ct. App. 1987).

86. *Id.* at 211. Wishbone had a lease on the same quarter section which covered all formations except the Red Fork. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.* at 212.

91. *Id.*

92. *Id.*

whether an oil and gas dispute should be brought before the Oklahoma Corporation Commission or the district court. The scope of the Commission's jurisdiction has expanded over the years, but its jurisdiction is still exclusive in the area of oil and gas conservation.

David M. Winfrey