



ORIGINAL

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED
SUPREME COURT
STATE OF OKLAHOMA

MAR 27 2023

JOHN D. HADDEN
CLERK

OKLAHOMA ACADEMY OF)
PHYSICIAN ASSISTANTS, INC.,)

Petitioner,)

v.)

No. 120,995

STATE OF OKLAHOMA *ex rel.* STATE)
BOARD OF MEDICAL LICENSURE)
AND SUPERVISION and STATE OF)
OKLAHOMA *ex rel.* STATE BOARD OF)
PHARMACY,)

Respondents.)

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Combs, J., with whom Kauger and Edmondson, JJ., join, concurring in result:

¶ 1 I concur in the ultimate result of denying Petitioner's application to assume original jurisdiction, but I would deny it on other grounds not discussed in the majority's Order.

¶ 2 This matter, as presented, is not justiciable at this time. *Tulsa Indus. Auth. v. City of Tulsa*, 2011 OK 57, ¶ 13, 270 P.3d 113, 120 ("The term 'justiciable' refers to a lively case or controversy between antagonistic demands. When a party presents for adjudication antagonistic demands that are merely speculative, a prohibited advisory opinion is being requested." (footnote omitted)); *Scott v. Peterson*, 2005 OK 84, ¶ 27, 126 P.3d 1232, 1239 ("This Court does not issue advisory opinions or answer hypothetical questions."). One of the requisite

precedent facts or conditions which generally must exist to obtain declaratory relief is that the issue involved in the controversy must be ripe for judicial determination. *Knight ex rel. Ellis v. Miller*, 2008 OK 81, ¶ 8, 195 P.3d 372, 374; *Gordon v. Followell*, 1964 OK 74, ¶ 0 syllabus, 391 P.2d 242, 242–43 (“In order to invoke the jurisdiction of the court under the declaratory judgments act there must be an actual, existing justiciable controversy between parties having opposing interests, which interests must be direct and substantial, and involve an actual, as distinguished from a possible, potential or contingent dispute.”). In *French Petroleum Corp. v. Oklahoma Corporation Commission*, 1991 OK 1, 805 P.2d 650, we determined:

The ripeness doctrine is a part of judicial policy militating against the decision of abstract or hypothetical questions. The conclusion that an issue is not ripe for adjudication emphasizes a prospective examination of the controversy indicating that future events may affect its structure in ways that determine its present justiciability. Subsequent events may sharpen the controversy or remove the need for decision of at least some aspects of the matter. The basic rationale of the ripeness doctrine is twofold: 1) to prevent the courts, through avoidance of premature adjudication [sic], from entangling themselves in abstract disagreements over administrative policies; and 2) to protect agencies from judicial interference until their administrative decisions have been formalized and their effects felt in a concrete way by the parties. The factors to be considered in any ripeness analysis are the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration.

Id. ¶ 7, 805 P.2d at 652-53 (footnotes omitted).

¶ 3 Here, the rules complained of have not been approved by the Oklahoma Legislature. As such, the rules cannot be “deemed finally adopted” under the Administrative Procedures Act and are not “valid or effective against any person or party,” *see* 75 O.S.2021, §§ 308(E), 308.2(A), thereby rendering the issue in this case not ripe for determination. There is no case or controversy for this Court to consider, and this Court does not issue advisory opinions.

¶ 4 I would therefore deny the Application to Assume Original Jurisdiction by order sheet.