OSCN www.oscn.net THE OKLAHOMA STATE COURTS NETWORK

Home | Courts | Court Dockets | Legal Research | Calendar | Help
Previous Case | Top Of Index | This Point in Index | Citationize | Next Case | Print Only
Oklahoma Attorney General's Opinions

Question Submitted by: The Honorable Kenneth Corn, State Representative, District 20

2001 OK AG 17
Decided: 04/11/2001
Oklahoma Attorney General Opinions

Cite as: 2001 OK AG 17, ___

¶0 This office has received your letter requesting an official Attorney General Opinion in which you ask, in effect, the following questions:

1. Are contract growing arrangements "contracts by adhesion" under Oklahoma law?
2. Which state's law governs the contract – the state where the integrator has its legal place of business or corporate headquarters, or the state where the contract is initiated or performed?
3. Under these contracts are the contract growers considered to be independent contractors or employees of the integrator?

I. Introduction

¶1 One of the most significant changes in agriculture in recent years has been the increase in the number of farmers who serve as "contract growers." A contract grower is a farmer who raises on his own property an agricultural commodity for another, "the integrator," with the integrator typically owning the crop throughout the process. Thus, in the livestock context, contract growers are paid to raise the integrator's livestock in the contractor's barns with the integrator typically supplying not only the animals but also the food and medicine necessary to their growth. *See Holly Farms Corp. v. NLRB*, 517 U.S. 392, 395 (1996). In the seed context, integrators provide contract growers with seed that the contract growers plant. The contractors tend the crop and then, at harvest, return to the integrator the progeny of the crop which the integrator then sells to independent farmers who will plant it to raise food or other cash crops. *See Delta & Pine Land Co. v. Sinkers Corp.*, 177 F.3d 1343, 1346 (Fed. Cir. 1999).

II. Adhesion Contract

¶2 You first ask whether the arrangement between a contract grower and an integrator is a contract of adhesion. The Oklahoma Supreme Court has defined an "adhesion contract" as follows:

> The term [adhesion contract] refers to a standardized contract prepared entirely by one party to the transaction for the acceptance of the other; such a contract, due to the disparity in bargaining power between the draftsman and the second party, must be accepted or rejected by the second party on a "take it or leave it" basis, without opportunity for bargaining . . . .

Rodgers v. Tecumseh Bank, 756 P.2d 1223, 1226 (Okla. 1988) (footnote omitted).

¶3 The fact that a contract is one of adhesion does not necessarily render it void. An adhesion contract will, however, be "interpreted most strongly against the drafter of the instrument." *Towe, Hester & Erwin, Inc. v. Kansas City Fire & Marine Ins. Co.*, 947 P.2d 594, 597 (Okla. Ct. App.1997) (quoting *Cont'l Fed. Sav. & Loan v. Fetter*, 564 P.2d 1013, 1019 (Okla. 1977)). Any ambiguities or uncertainties in the contract will be construed in favor of the party presented with the form contract. *See Dismuke v. Cseh*, 830 P.2d 188, 190 (Okla. 1992); *Brannon v. Boatmen's Nat'l Bank*, 976 P.2d 1077, 1083 (Okla. Ct. App. 1998). Indeed, even if the terms of the adhesion contract are clear and unambiguous they will not always be enforceable. As the Supreme Court noted in

Exhibit 26

Rodgers, adhesion contracts reflect an imbalance of bargaining power. *See Rodgers*, 756 P.2d at 1226. When this imbalance of bargaining power rises to a sufficient level and is combined with contractual terms which are unreasonably favorable to the other party, the courts will refuse to enforce those terms on the grounds of unconscionability. *See Barnes v. Helfenbein*, 548 P.2d 1014, 1020 (Okla. 1976). You have indicated that integrators typically offer to their growers form contracts which the growers must either accept or reject in their entirety. If this is the case, such contracts are contracts of adhesion. Whether any particular contract between a grower and an integrator is a contract of adhesion is a question of fact which cannot be answered in an Attorney General's opinion. *See* 74 O.S. Supp. 2000, § 18b(A)(5).

III. Choice of Law

¶4 Your second question asks which state's law governs the contract – the law of the integrator's domicile or the law of the state where the contract is to be performed. By statute "[a] contract is to be interpreted according to the law and usage of the place where it is to be performed, or, if it does not indicate a place of performance, according to the law and usage of the place where it is made." 15 O.S. 1991, § 162. Thus, as a general matter, contracts setting up contract growing arrangements will be governed by the law of the state in which the growing is to occur. The parties to a contract may, nevertheless, provide in the contract that the law of another state will govern the agreement. *See Carmack v. Chem. Bank New York Trust Co.*, 536 P.2d 897, 899 (Okla. 1975); *Williams v. Shearson Lehman Bros., Inc.*, 917 P.2d 998, 1002 (Okla. Ct. App. 1995). There are limits, however, to the power of the contract to determine the law under which it will be governed. In *Dean Witter Reynolds, Inc. v. Shear*, 796 P.2d 296 (Okla. 1990), the Oklahoma Supreme Court held that the contractual choice of the parties will not control if:

> (a) the chosen state has no substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties' choice, or
>
> (b) ***application of the law of the chosen state would be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state*** in the determination of the particular issue ***and which, . . . would be the state of the applicable law in the absence of an effective choice of law by the parties.***

Id. at 299 n.12 (Okla. 1990) (alteration in original) (quoting Restatement (Second) of Conflict of Laws § 187 (1988)). A state will be found to have a substantial relationship to the parties or the transaction if, for example, the contract is to be performed in that state or one of the parties is domiciled or has its principal place of business there. *See* Restatement (Second) of Conflict of Laws § 187 cmt. f (1988). Examples of "fundamental policies" as that term is used in the Restatement include policies embodied in statutes that declare certain kinds of contracts illegal and in those "designed to protect a person against the oppressive use of superior bargaining power." *Id.* at cmt. g. Whether these criteria are satisfied in a particular case depends on the terms of the contract and the identities of the parties and so is beyond the scope of an Attorney General's Opinion. *See* 74 O.S. Supp. 2000, § 18b(A)(5).

IV. Relationship Between the Contract Grower and the Integrator

¶5 As with any business relationship, the terms of the contracts between contract growers and integrators will vary. You have, however, detailed what you describe as the typical features of one form of contract growing arrangement – that for raising chickens. Under the terms of the typical **poultry** contract the grower agrees to raise to adulthood a flock of chicks belonging to the integrator. The flock is housed in the grower's barns and tended by the grower. The integrator owns the flock the entire time and provides all food, medicine and other supplies. When the birds are fully grown, the integrator returns for the birds and the grower is compensated under a formula that takes into account the weight and health of the birds as well as the cost of feed expended upon them. You have indicated that under these contracts the grower may hire employees but may not assign the contract or raise birds for another integrator during the contract. Typically the contract will state expressly that the grower is to be considered an independent contractor and not an employee. However, when determining whether a contract creates an employment relationship, courts look not to how a contract describes the relationship but to the actual roles played by the parties. *See Texaco, Inc. v. Layton*, 395 P.2d 393, 398 (Okla. 1964) (citing *Ottinger v. Morris*, 104 P.2d 254 (1939)).

¶6 The distinguishing characteristic of an employment relationship is control over the manner in which the work is performed. *See Tulsa County v. Braswell*, 766 P.2d 341, 342 (Okla. 1988) (citing *Clark v. First Baptist Church*,

570 P.2d 327 (Okla. 1977). As the Supreme Court has said:

> An independent contractor is one who engages to perform a certain service for another, according to his own method and manner, free from control and direction of his employer in all matters connected with the performance of the service, except as to the result thereof.

Miller Constr. Co. v. Wenthold, 458 P.2d 637, 639 (Okla. 1969). While the person hiring an independent contractor is limited to specifying what he or she wants accomplished, an employer may specify and control the manner in which an employee performs the actual work itself. This is "[t]he decisive test for determining whether one is an employee or an independent contractor." *Bouziden v. Alfalfa Elec. Coop., Inc.*, 16 P.3d 450, 459 (Okla. 2000).[1]

¶7 Some aspects of the contract you describe weigh in favor of a determination that the grower functions as an independent contractor under it. The grower is paid based largely on performance, rather than receiving a wage or salary, which is indicative of an employment relationship. *See Mistletoe Express Serv., Inc. v. Culp*, 353 P.2d 9, 12 (Okla. 1959). In addition the grower raises the chickens in his own barns and is free to hire his own employees. Courts have held that provision of one's own equipment and the right to engage employees are factors which militate in favor of finding that the person in question is an independent contractor. *See id.; Cook Constr. Co. v. Longcrier*, 405 P.2d 165, 169 (Okla. 1965) (Williams, J., dissenting).

¶8 On the other hand, a number of other elements of the contract you describe militate in the direction of an employment relationship. The integrator may terminate the contract at any time and for any reason. This has been held to be characteristic of an employment relationship. *See Mistletoe Express Serv.*, 353 P.2d at 12. Some of the tools of the job such as feed, medicine, and other supplies are furnished by the integrator which is consistent with an employment relationship. *See id.; Smith v. St. Francis Hosp., Inc.*, 676 P.2d 279, 281 (Okla. Ct. App.1983). Performance under the contract may not be assigned to another, a fact which courts have held tends to indicate a master-servant relationship. *See Cook Constr. Co.*, 405 P.2d at 169,170. Similarly, the contract you describe provides that the grower may not raise birds for himself or any other integrator. This sort of exclusivity is a badge of an employment relationship. *See Commonwealth Life Ins. Co. v. Gay*, 365 P.2d 149, 151 (Okla. 1961) (citations omitted).

¶9 Most importantly, however, the contract you describe grants the integrator a remarkable degree of control over the manner in which the chickens are raised. Although the grower provides the barns, the barns must be outfitted to the integrator's specifications. These specifications frequently include such details as the water storage capacity of the barns, the wattage of backup generators, and even the spacing of the light fixtures. The methods for raising the chicks are themselves minutely specified in the contract or an addendum to it which lays out such requirements as the maximum number of chicks per brooder, the air temperature inside the barns, and the angle of the watering tubes. The contract also provides for inspection by the integrator to ensure that these conditions are complied with. It is extremely difficult to characterize this situation as one in which the grower fulfills the contract "according to his own method and manner, free from control and direction of ... [the integrator] in all matters connected with the performance of the service, except as to the result thereof." *Miller Constr. Co.*, 458 P.2d at 639.

¶10 Although we cannot in an Opinion determine that any particular contract growing arrangement establishes an employer-employee relationship, where the contract provides in detail the manner in which the livestock or crop is to be raised, the contract grower ceases to be an independent contractor and becomes an employee.

¶11 It is, therefore, the official Opinion of the Attorney General that:
1. Contracts establishing contract growing arrangements that are presented to the grower with no opportunity to negotiate their essential terms are contracts of adhesion.
2. Absent an effective choice of law by the parties, contract growing arrangements providing for the raising of a crop in Oklahoma are governed by the laws of Oklahoma. *See* 15 O.S. 1991, § 162.
3. Where an integrator directs in detail the manner in which raising of the crop is to be performed the contract grower is the employee of the integrator.

W.A. DREW EDMONDSON
ATTORNEY GENERAL OF OKLAHOMA
MILES TOLBERT

ASSISTANT ATTORNEY GENERAL

FOOTNOTE:

[1] *Bouziden* is only the most recent in a long line of cases that have described the control of the work done as "the decisive test" in determining whether a employment relationship exists. *See, e.g., Barfield v. Barfield*, 742 P.2d 1107, 1110 (Okla. 1987); *Murrell v. Goertz*, 597 P.2d 1223, 1225 (Okla. Ct. App. 1979); *Union Mut. Ins. Co v. Hill*, 356 P. 2d 336, 337 (Okla. 1960); *Yellow Cab Co. v. Wills*, 185 P.2d 689, 690 (Okla. 1947). There is, somewhat confusingly, a parallel line of cases that list several relevant factors and announce that "no one factor is controlling." *See, e.g., Duncan v. Powers Imports*, 884 P.2d 854, 856 (Okla. 1994) (quoting *Coleman v. J.C. Penney Co.*, 848 P.2d 1158, 1160 (Okla. 1993)); *Swafford v. Williams*, 863 P.2d 1215, 1217 (Okla. 1993). The apparent tension between these decisions can be resolved by reference to the seminal case relied upon by all of the "no one factor is controlling" decisions – *Page v. Hardy*, 334 P.2d 782 (Okla. 1958). That case held that "control . . . in all matters connected with the performance of the service" is the determinative issue, with the various factors offered as means of determining if such control exists. *Id.* at 784.

Citationizer© Summary of Documents Citing This Document

Cite	Name	Level
None Found.		

Citationizer: Table of Authority

Cite Name		Level
Oklahoma Court of Civil Appeals Cases		
Cite	Name	Level
1995 OK CIV APP 154, 917 P.2d 998, 67 OBJ 1996,	Williams v. Shearson Lehman Bros., Inc.	Cited
1979 OK CIV APP 25, 597 P.2d 1223,	MURRELL v. GOERTZ	Cited
1997 OK CIV APP 58, 947 P.2d 594, 68 OBJ 3667,	Towe, Hester & Erwin, Inc. v. Kansas City Fire & Marine Insurance Co.	Cited
1999 OK CIV APP 17, 976 P.2d 1077, 70 OBJ 1256,	Brannon v. Boatmen's National Bank of Oklahoma	Cited
1983 OK CIV APP 58, 676 P.2d 279,	Smith v. St. Francis Hosp., Inc.	Cited
Oklahoma Supreme Court Cases		
Cite	Name	Level
1987 OK 72, 742 P.2d 1107, 58 OBJ 2305,	Barfield v. Barfield	Cited
1988 OK 36, 756 P.2d 1223, 59 OBJ 956,	Rodgers v. Tecumseh Bank	Cited
1988 OK 139, 766 P.2d 341, 59 OBJ 3444,	Tulsa County v. Braswell	Cited
1939 OK 401, 104 P.2d 254, 187 Okla. 517,	OTTINGER v. MORRIS	Cited
1990 OK 67, 796 P.2d 296, 61 OBJ 1946,	Dean Witter Reynolds, Inc. v. Shear	Cited
1992 OK 50, 830 P.2d 188, 63 OBJ 1289,	Dismuke v. Cseh	Cited
1993 OK 21, 848 P.2d 1158, 64 OBJ 837,	Coleman v. J.C. Penney Co.	Cited
1993 OK 141, 863 P.2d 1215, 64 OBJ 3366,	Swafford v. Sherwin Williams	Cited
1947 OK 305, 185 P.2d 689, 199 Okla. 272,	YELLOW CAB CO. v. WILLS	Cited
1994 OK 126, 884 P.2d 854, 65 OBJ 3839,	Duncan v. Powers Imports	Cited
1958 OK 283, 334 P.2d 782,	PAGE v. HARDY	Cited
1959 OK 250, 353 P.2d 9,	MISTLETOE EXPRESS SERVICE v. CULP	Cited
1961 OK 186, 365 P.2d 149,	COMMONWEALTH LIFE INSURANCE COMPANY v. GAY	Cited
1964 OK 51, 395 P.2d 393,	TEXACO, INC. v. LAYTON	Cited
1965 OK 60, 405 P.2d 165,	COOK CONSTRUCTION COMPANY v. LONGCRIER	Cited

1969 OK 123, 458 P.2d 637,	MILLER CONSTRUCTION COMPANY v. WENTHOLD	Cited
1975 OK 77, 536 P.2d 897,	CARMACK v. CHEMICAL BANK NEW YORK TRUST CO.	Cited
1976 OK 33, 548 P.2d 1014,	BARNES v. HELFENBEIN	Cited
1977 OK 96, 564 P.2d 1013,	CONTINENTAL FED. SAV. & LOAN ASS'N v. FETTER	Cited
1977 OK 177, 570 P.2d 327,	CLARK v. FIRST BAPTIST CHURCH	Cited

Title 15. Contracts

Cite	Name	Level
15 O.S. 162,	Law Governing Contract	Discussed

Title 74. State Government

Cite	Name	Level
74 O.S. 18b,	Duties of Attorney General - Counsel of Corporation Commission as Representative on Appeal From Commission	Discussed