Oklahoma Land Title Association

August 15, 2020

# IMPACT STATEMENT

McGirt v. Oklahoma
Oklahoma Abstracting and Title Insurance Industry

## I. INTRODUCTION

On July 9, 2020 the United States Supreme Court issued its decision in *McGirt v. Oklahoma*[1] (hereafter *McGirt*) which held that the reservation for the Muscogee (Creek) Nation (the "Tribe") in eastern Oklahoma was never disestablished (abolished) by Congress. The reservation boundaries are based on treaties between the United States and the Muscogee (Creek) Nation spanning from 1833 through 1866, as depicted on the map located on the Oklahoma Department of Transportation's website at https://www.odot.org/odot100/maps-spec/misc_tribaljurisdictions.pdf showing all lands in "Indian Country" in Oklahoma.[2]

Many years prior to the *McGirt* decision, the United States Supreme Court established the cornerstone legal principle of federal Indian law, that individual states are limited in their ability to exercise jurisdiction within the geographical boundaries of Indian Country, as defined by federal law.[3] With the passage of time and changing circumstances, Congress has refined this principle through federal legislation to delegate some jurisdictional matters to the state, but only as narrowly defined within such measures.[4] Examples of delegation of civil jurisdiction in Oklahoma include probate and guardianship,[5] quiet title actions, partition and judicial approval of sale and leasing of restricted Indian lands.[6]

While the holding in *McGirt* case is narrow in scope to address criminal jurisdiction of the Muscogee (Creek) Nation under the federal Major Crimes Act for the offense committed by Mr. McGirt, the additional impact of the case determining that the Muscogee (Creek) Reservation was never disestablished raises issues beyond the

particular facts of the case. The Muscogee (Creek) Nation may be confirmed in its ability to assert civil and administrative jurisdiction over all land contained within the boundaries of the reservation. Other tribes that are similarly situated (Seminole, Choctaw, Chickasaw, Cherokee), the Osage, and the "General Allotment Act" tribes may also have the opportunity to exercise similar powers within the boundaries of their respective reservations, i.e. within Indian Country.[7]

In recent public statements Oklahoma Tribal leaders expressed their continuing commitment to "developing a framework for clarifying respective jurisdictions and to ensure collaboration among Tribal, State, and Federal authorities in the interest of effective law enforcement and administration of justice across Tribal lands."[8] As further stated in the Joint Statement from the Cherokee, Chickasaw and Choctaw Nations, "none of the leaders of the Five Tribes support eroding our sovereignty or turning back the recognition achieved through *McGirt*."[9] Further,

> *We all agree that such discussion must address the parameters of criminal jurisdiction and potential impacts of the McGirt case on civil jurisdiction and must involve members of Congress and state leaders. We are optimistic that the leadership of the Five Tribes will demonstrate the wisdom to remain engaged, in a unified manner, with stakeholders as we move forward cautiously and carefully on matters impacting the McGirt case."*

It is very clear under *McGirt* and other federal decisions preceding and following *McGirt* that a reservation created by Congress or treaty with the United States can only be diminished or disestablished by Congress. "If the reservation remains intact, then federal law treats the land at issue as Indian Country not subject to most state and local regulation."[10] We must respect these decisions and work towards achieving clarity and stability as potential conflicts arise between competing authorities of the tribal, federal, state, county, and municipal governments.

It is in the spirit of collaboration and cooperation among the various governmental sovereigns within the State of Oklahoma that the Oklahoma Land Title Association, as a stakeholder in various issues impacted by the McGirt case, offers this statement and dedicates its resources to serve our tribal, state and federal leaders who will be in deliberation on these issues for the future of Oklahoma commerce and the real estate industry.

## II. ISSUES THAT AFFECT THE REAL ESTATE TITLE INDUSTRY

Many in the real estate, abstracting, title insurance, oil and gas, and commercial and residential lending industries, and bar associations are examining the possibilities of new issues being raised that were not historically raised before the *McGirt* decision. These issues concern the legal jurisdiction of the Muscogee (Creek) Nation, as well as the other tribes that are similarly situated (Seminole, Choctaw, Chickasaw, Cherokee), Osage, and other Oklahoma tribes controlled by the provisions of the General Allotment Act[11], numbering 39 Oklahoma tribes in total.

The Oklahoma Land Title Association and the American Land Title Association are active in these discussions. Government-Sponsored Enterprises, "the GSE's" (e.g. Fannie Mae, Freddie Mac, and federal agencies such as HUD, Small Business Administration, Farmers Home Administration, etc.) are also inquiring about the collateral impact of the decision on residential, business, and agricultural lending in our state. Topics of discussion include, but are not limited to, taxing authority, land use and zoning, access, land records and recordation, subdivision planning, land development, probate, divorce, mortgage foreclosures, mechanic's liens, bankruptcy, and other civil judgment enforcement[12]. There are additional outstanding questions pertaining to the application of tribal laws on non-members' ownership of land within a reservation, or a tribal members' ownership of land both within and without a reservation.

The challenges in identifying an individual's status as a tribal member brings up the delicate subjects of anti-discrimination laws such as the Fair Housing Act, privacy laws, and similar prohibitions and regulations. These questions can be unsettling for industries that rely on the ability to determine all facts that affect the application of laws, legal concepts and legal remedies for buying and selling properties, residential and commercial real estate lending within these jurisdictional boundaries, and closing and insuring title risks associated with these transactions.

Many new issues are identified as we all consider the impact of the *McGirt* and similar decisions. The main issue is tribal jurisdiction over tribal members and non-members and their privately-owned land within the reservation. Below are five of the most concerning questions that may require resolution or clarification through the joint efforts of the tribal, federal, and state governments.

**A. Judicial Jurisdiction** – One of the initial concerns in the wake of *McGirt* has to do with the authority of the courts and the proper venue for resolving civil matters and property disputes between members (Indians) and non-members (non-Indians). There is a clear distinction between title to lands, and jurisdiction over lands and activities

thereon.[13] Titles to land (ownership) are not in dispute, but examples of property-related disputes would include property boundary disagreements, land use issues, or monetary disputes (e.g. mortgage foreclosures and mechanics' liens) that could affect land physically located within the boundaries of a reservation. This may also raise the question of enforcement of tribal court judgments on non-member owned land within a reservation, including appellate review.

The United States Supreme Court considered the issue of jurisdiction of tribal courts and has addressed the question of tribal, state, and federal civil jurisdiction over tribal members and non-members within and without the reservation in the case of *Montana v. United States*.[14] This case established the general rule that a tribe's exercise of civil jurisdiction does not extend to non-members within the reservation, with two exceptions: (1) the non-member entered a "consensual relationship" with the tribe or its members through commercial dealing, contracts, leases, or other arrangements or (2) the non-member's conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.

*The question in real estate transactions on lands located within a reservation becomes "which law applies?"* Will the *McGirt* decision lead to chaos in civil jurisdiction between the state and the tribe? Probably not, but the language of the current laws and court decisions on this subject are broad enough to leave questions that have not been clearly answered by the courts.[15] The result may leave all citizens unsettled or open to speculation as to which law applies in an infinite number of business interactions involving the parties and their activities within and without a reservation, both for tribal members and non-members alike.

In the aftermath of *Montana*, there has been significant confusion over the extent to which a tribe may exercise their inherent sovereign power over non-members activities on their reservations or non-member ownership of lands within the reservation.[16] While most of the appellate cases have involved business enterprises or violations of city ordinances involving disputes between tribes or tribal members and non-members, there could very well be confusion over a simple residential property line dispute between a tribal member and a non-member within an established Tulsa neighborhood. Perhaps the best way to alleviate such confusion is to use the tools that the governments have available to enter into inter-governmental agreements or compacts to provide guidance about which court and body of law to apply in matters affecting commercial and residential real estate ownership, purchase and sale transactions, leasing, and lending involving non-tribal or restricted lands, including

rights and remedies of the parties as has been the course of the legal and judicial community since statehood.

**B. Legislative and Administrative Jurisdiction** – Some in the real estate industry are raising questions about the authority of a tribe to enact laws that address legal principles and remedies of contract and commercial law beyond those affecting the tribe or its tribal property. These legal principles and remedies established by state and federal law have formed the basis of business relationships since inception of commerce. These principles and rules are founded in civil codes and as uncodified tenets in American common law. In Oklahoma, there are hundreds of statutes that are invoked in any given business relationship or element of commerce.

Pursuant to the Indian Reorganization Act of 1934,[17] tribes have an inherent, acknowledge right of self-government."[18] Many tribes have enacted laws that apply to business relationships and land transactions within their respective constitutions and codes, and some tribes have incorporated their own nation's "common law." While it has been stated that Tribal governments exist outside of the scope of the U.S. Constitution, they do so in close ties with the Constitution and the Bill of Rights.[19] It is well settled law that Indian tribes are "domestic dependent nations" that exercise inherent sovereign authority over their members and territories.[20]

Congress has full authority over Indian tribes, but on a few occasions it has delegated jurisdiction to states, such as oil and gas conservation laws.[21] The issue of ownership of property rights in water and the power to regulate same by the tribe or by the state has been one of the hottest legal issues in Oklahoma.[22]

Many Oklahoma tribes have established commissions or have the power to create commissions with jurisdiction to regulate land use activity and collection of associated revenue on land within the boundaries of their reservation. This would include the power to pass land use and zoning regulations, as well as the enforcement of those regulations by fines and judgments. There is clearly the power to tax certain activities or land use within those boundaries. There is also precedence for a tribe to collect taxes from non-members for sales on trust land.[23] The conflict may arise in the effect on non-members owning property within the reservation. What administrative power does a tribe have over non-members? The United States Supreme Court stated in *Nevada v. Hicks*[24] that "Tribal assertion of regulatory authority over non-members must be connected to that right of the Indians to make their own laws and be governed by them."

As to the ramifications of *McGirt* on civil matters, one of the least settled areas of the law appears to be in the area of taxation, as mentioned above. Both state and tribal governments rely on revenue generated by land and the activities upon that land to fund their essential statutory and regulatory functions, community programs, and public services. There may be conflicts to resolve in the future as to the taxation by a tribe or the state of tribal members and non-members, both on and off the reservation.[25] It has been firmly established that a tribe has the authority to levy taxes on non-members doing business on trust land as "a fundamental attribute of sovereignty,"[26] which enables a tribe to fund its governmental services.[27]

Conflicts between taxing authorities or additional layers of taxation can make it difficult for landowners and businesses when there exists the potential for unexpected levies from multiple governmental authorities. Such conflict could have the potential to stifle business growth or land ownership unless these potential conflicts are resolved. Again, these conflicts can be resolved with collaboration and cooperation among state, county, municipal, and tribal governments.

**C. Public Land Records** – Oklahoma county governments have been the repository for filing and maintaining court, land, and property tax records since statehood.[28] Many Oklahoma tribes also have their own courts of general jurisdiction as well as systems to maintain land title records (covering lands held in trust by the United States, tribal lands, and restricted lands) and tax commissions.

*What is considered a "public land record"* is at the heart of questions raised in the abstracting and title insurance industries in Oklahoma post *McGirt*. In Oklahoma, the Insurance Code provides that prior to the issuance of a commitment or policy of title insurance, a title insurance producer must obtain (1) an Abstract of Title and (2) an Examination of Title by an attorney licensed to practice in Oklahoma.[29]

In the preparation of an Abstract of Title, Oklahoma abstractors are required by law to certify to "all documents or matters which legally impart constructive notice of matters affecting title to real property, any interest therein or encumbrances thereon, which are filed, recorded and currently available for reproduction in the offices of the county clerk and the court clerk in the county for which such abstract plant is maintained."[30] This includes court proceedings, pending suits, liens, judgments, executions, ad valorem taxes, personal property taxes, and special assessments.[31]

*Is an Abstractor now required to search tribal court and land records in Oklahoma?* Oklahoma law requires the Oklahoma Supreme Court to issue standards for extending full faith and credit to the records and judicial proceedings of any court of any federally

recognized Indian nation and allows for reciprocal recognition by the tribe.[32] The Oklahoma Supreme Court's rules (1) requires the tribe to register their statute or other evidence that the tribal court grants reciprocity to the State of Oklahoma with the Administrative Office of the Courts and (2) requires that an authenticated copy of the tribal judgment be filed in the office of the county clerk in order for the tribal judgment to receive recognition by the state courts and to constitute public notice.[33]

Thus, an Oklahoma Abstractor is not required by law to independently search tribal records. Tribal proceedings are not part of the public records of Oklahoma unless the judgment is filed in a county clerk's office.[34] Buyers and sellers of properties have no constructive notice of land records maintained by the various tribal offices. Having a single centralized system for filing all documents that affect land is absolutely necessary for the stability of a strong real estate economy.[35] State and county governments can continue to work with tribal governments through mutual agreement and legislation to assure its mutual citizens that land records are available to the public and every person's property rights are protected.

### D. Title Insurance Considerations

The licensed abstractor compiles all instruments filed of record as described above and certifies the Abstract of Title as containing all instruments recorded in the offices of the county clerk, the court clerk, and the county treasurer's offices affecting the title to the subject real property. The Abstract of Title is then submitted to an Oklahoma attorney for examination and their professional opinion as to the marketability of the title to the property. "Marketable Title" is defined by the Oklahoma Bar Association as "free from apparent defects, grave doubts and litigious uncertainty, and consists of both legal and equitable title fairly deducible of record."[36]

The title insurance producer will then review the attorney's title examination to issue a Commitment or Policy of Title Insurance. The American Land Title Association (ALTA)[37] provides the form for title insurance policies, usually an Owners or Loan (Lender's) policy. The ALTA policies define "Public Records" as: "Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge."

Insureds (Owners, Lessees, and Lenders) are protected under the stated coverages under ALTA policies of title insurance *inter alia* for any defect in or lien or encumbrance on the Title not excluded from the policy, for documents not properly filed, recorded, or indexed in the Public Records, enforcement actions based upon the exercise of a government police power if a notice is recorded in the Public Records, the exercise of

the rights of eminent domain if a notice is recorded in the Public Records. In addition, there is coverage for any unpaid liens for real estate taxes or assessments imposed on the Title by a government authority. The policies also contain coverages for the unmarketability of title, lack of right of access, and violation or enforcement of any law, ordinance, permit or governmental regulation relating to the occupancy, use or enjoyment of the Land, including the subdivision of the land and environmental protection, if a notice of a violation or enforcement of such matters is recorded in the Public Records (all subject to the terms of the policy, including its Exclusions from Coverage, Exceptions to Coverage in Schedule B, and Conditions).

General principles of insurance law apply to policies of title insurance that characterize a policy of title insurance as a contract between the Insured and the company (the title insurer). Such policies include provisions that address "Choice of Law" in Paragraph 17 of the Conditions:

> *Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.*
>
> *Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.*

"Choice of Forum" is also addressed in Paragraph 17:

> *Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.*

In addition to the standard coverages of an owners or a loan policy of title insurance, various endorsements may be issued at the requested by the Insured that provide additional coverages for a myriad of risks associated with the use and enjoyment of the Land. Such coverages include loss or damage resulting from violations of zoning ordinances, improper subdivision of the land, violations of covenants or restrictions, unpaid mechanics' or materialmen's' liens. Other endorsements relate to specific access, environmental protection liens, mortgage modifications, lien priority, tax parcels, utility access, and usury, to list a few. There is also an entire series of

endorsements designed to support energy projects (wind farms and solar), as well as redevelopment involving tax credits, large manufacturing projects involving complicated lending structures, and transactions where water rights[38] are concerned. These types of title insurance coverages do not pertain to the title to the land, but to activities associated with the use of the land by the owner or as collateral for a lender. These activities may also fall within the jurisdiction of a tribe on properties located within a reservation as brought into question by the *McGirt* decision.

In the insurance industry, title insurance particularly, risks are measured against the legal principles as established by the contract between the parties, applicable statutes, and interpretations by the courts. Predictability is at the forefront of risk analysis, management, and risk rate pricing. In order to manage risk, insurance companies and their insureds must agree about what law applies, the forum through which the law applies, and the venue where disputes are resolved. If the applicable law or the contracted choice of law and forum are questionable, leading to an element of unpredictability, the viability of insurance products may be in jeopardy if the insurance company or the insured could find themselves in an unfamiliar court with unfamiliar laws applicable to the defense of the insured under the terms of the policy of insurance. Thousands upon thousands of title insurance policies have been purchased by owners, tenants and lenders pertaining to properties located within the boundaries of Oklahoma reservations since the early 1970's. Title insurance lends stability to the real estate economy for residential and commercial owners and is critical to the asset quality for a lender that takes such properties as collateral for its mortgage loans.

Regardless of the arguments raised in *McGirt* as to whether the reservation was legally disestablished or practically observed, the decision that the reservation was never disestablished clouds the historical position of the state's authority within the reservations. As Justice Stevens writes in *Brendale v. Confederated Tribes and Bands of Yakima Nation*,[39] "it is impossible to articulate precise rules that will govern whenever a tribe asserts that a land use approved by a county board is pre-empted by federal law."

Because of the possible uncertainties in matters covered under policies of title insurance as to what constitutes a public record, potential defects in title caused by claims outside the public records, undisclosed liens, rights of access, taxation, land use regulation, etc., title insurance companies must examine their ability to continue offering the same coverages afforded under their policies in Oklahoma prior to the *McGirt* decision. Certainty in these areas in which the title industry is a stakeholder is key to the continued prosperity and growth of the State of Oklahoma for all its citizens.

Leadership of our federal, state, and tribal governments can resolve these uncertainties through collaboration and agreement.

## III. CONCLUSION

As stated in the dissenting opinion in *McGirt*, the decision "creates significant uncertainty for the State's continuing authority over any area that touches Indian affairs, ranging from zoning and taxation to family and environmental law."[40] This may add an element of additional or competing layers of government and control over most of Oklahoma, including powers over non-member citizens and businesses.

We must be very thoughtful as Oklahomans move forward to work towards solutions, perhaps in the form of federal legislation, or agreements or compacts between the State and the individual tribes, to maintain the stability that Oklahoma has enjoyed and has fueled our economy. It will take some time and hard work on the part of tribal, state, and federal government leaders to determine their respective jurisdictional boundaries and to provide necessary certainty for those who do business in Indian Country. Perhaps our leaders could consider the adoption of interim agreements or compacts to recognize and confirm past and present jurisdictional actions and maintain the status quo as these issues are considered by Congress and the tribes for permanent resolutions.

There is little doubt that all stakeholders in the real estate and title industry, as well as property owners and lenders, desire that there be no interruption in our current, robust Oklahoma real estate economy. In order to continue to grow our state's economy and flourish as Oklahomans, our leaders must work together as they have always done[41] to establish greater certainty regarding establishment of jurisdictional boundaries within Indian Country.

Other states have faced similar issues and have worked towards successful solutions. The OLTA believes that we can find successful solutions too and offers its resources for further discussion and potential resolutions in the way of maintaining the status quo and exploring a way forward.

If you would like to explore any of the issues raised here or wish to take advantage of the resources offered by the Oklahoma Land Title Association, please contact April Jolley, Executive Director of the Oklahoma Land Title Association at (918) 607-3218 or admin@oklahomalandtitle.com.

[1] *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020)
[2] The term "Indian Country" was codified in 18. U.S.C. §1151 in 1948 and is defined as "(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same." This definition within the Major Crimes Act was extended to apply to civil matters occurring within the boundaries of Indian Country. See *Pittsburg & Midway Coal Mining Co. v. Watchman*, 52 F.2d 1531 (1995).
[3] *Worcester v. Georgia*, 31 U.S. 515 (1832)
[4] For example, see Pub. L. 83-280, 67 Stat. 588.
[5] 61 Stat. 731, Section 3(a) (Act of August 4, 1947, commonly known as "The Stigler Act") "The State courts of Oklahoma shall have exclusive jurisdiction of all guardianship matters affecting Indians of the Five Civilized Tribes, of all proceedings to administer estates or to probate the wills of deceased Indians of Five Civilized Tribes, and of all actions to determine heirs arising under section 1 of the Act of June 14, 1918 (40 Stat. 606)."
[6] Id. Section 9 and Section 11
[7] Federal statute defines "Indian Country" to include "all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation." Act of June 25, 1948, ch. 645, §1151, 62 Stat. 757, codified at 18 U.S.C. §1151. See also *Cabazon Band of Mission Indians*, 480 U.S. 202, n. 5 (1987), applying this definition to both civil and criminal jurisdiction.
[8] Tribal Leaders Release Set of Principles on Jurisdiction Following Ruling (July 16, 2020) - https://www.choctawnation.com/news-events/press-media/tribal-leaders-release-set-principles-jurisdiction-following-scotus-ruling
[9] Joint Statement from the Cherokee, Chickasaw and Choctaw Nations (July, 2020) - https://www.choctawnation.com/news-events/press-media/joint-statement-cherokee-chickasaw-and-choctaw-nations.
[10] *Oneida Nation v. Village of Hobart*, No. 19-1981 (7th Cir. 2020), citing *McGirt*
[11] Also commonly referred to as "The Dawes Act", Act of Feb. 8, 1998 (24 Stat. 388, ch. 119, 25 U.S.C. §331
[12] Enforcement of civil judgments to include execution, garnishment, hearing on assets, sheriff's sale, and writ of assistance (eviction)
[13] *Currey v. Corporation Commission of Oklahoma*, 1979 OK 89, 617 P.2d 177 (Okla. 1979)
[14] *Montana v. United States*, 450 U.S. 544 (1981)
[15] Contrast *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316 2008) and *Montana v. United States*, 450 U.S. 544 (1981)
[16] See *National Farmers Union Ins. Co. v. Crow Tribe*, 471 U.S. 845 (1985); *Iowa Mutual Ins. Co. v. LaPlante*, 480 U.S. 9 (1987); *Atkinson Trading Company v. Shirley*, 532 U.S. 645 (2001); *Strate v. A-1 Contrac*tors, 520 U.S. 438 (1997), *Dollar General Corp. v. Mississippi Band of Choctaw Indians*, 136 S.Ct 2159 (2016); and *Herrera v. Wyoming*, 139 S.Ct. 1686 (2019)
[17] The Indian Reorganization Act of 1934, ch. 576, 48 Stat. 984
[18] Id. at §16
[19] *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316 2008); See also Indian Civil Rights Act of 1968, 25 U.S.C. §1301-1304.
[20] *Cherokee Nation v. Georgia*, 5 Pet. 1, 17, 8 L.Ed 25 (1831)
[21] The Stigler Act, 61 Stat. 731 (1947), as amended, requiring application of oil and gas conservation laws, but requiring approval by the Secretary of Interior (via BIA) of restricted Indian lands. The Stigler Act is a good example of the concurrent jurisdiction of the federal and state governments with respect to Indian lands.

[22] Robert T. Anderson, *Water Rights, Water Quality, and Regulatory Jurisdiction in Indian Country,* 34, Stan. Envtl. L.J., 195 (2015), Joel West Williams, *The Five Civilized Tribes' Treaty Rights to Water Quality and Mechanisms of Enforcement*, 25 N.Y.U Envtl. L.J. 269 (2017); See also www.waterunity.ok.com

[23] See *Oklahoma Tax Commission v. Citizen Band, Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505 (1991) where the United State Supreme Court held that under the doctrine of tribal sovereign immunity, the tribe was not subject to state sales taxes on cigarette sales made to tribal members, but the tribe was liable to the State for taxes on sales to non-tribal members where the state had not asserted jurisdiction over Indian lands under Public Law 280. Chief Justice Rehnquist wrote in the opinion for a unanimous court finding that Tribal land, whether held in trust or as part of a reservation, is set apart for the use of the tribe, and as such qualified for sovereign immunity. "Nevertheless, the Tribe's sovereign immunity does not deprive Oklahoma of the authority to tax cigarette sales to non-members of the Tribe at the Tribe's store, and the Tribe has an obligation to assist in the collection of validly imposed state taxes on such sales", citing *Moe v. Confederated Salish and Kootenai Tribes*, 425 U.S. 463 (1976).

[24] *Nevada v. Hicks*, 533 U.S. 353 (2001)

[25] See the Oklahoma Indian Welfare Act, 25 U.S.C. §5201 pertaining to collection of state gross production taxes

[26] *Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134 (1980). See also, *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130 (1982)

[27] Imposition of possessory interest tax and business activity tax imposed on tribe and non-Indian businesses operating on the reservation was allowed in *Kerr-McGee Corp v. Navajo Tribe of Indians*, 471 U.S. 195 (1985)

[28] The Oklahoma Secretary of State also maintains records covering utility companies and railroads

[29] Title 36 Okla. Stat. §5001

[30] Title 1, Okla. Stat. §21 (commonly known as the Oklahoma Abstractors Act)

[31] OAR 5:11-5-3 Preparation of Abstracts:

> *(c) Contents of abstract. For the time period covered by the certification, an abstract of title shall include but not be limited to the following: (1) all instruments that have been filed for record and have been recorded in the office of the county clerk for the county in which the property is located which: (A) legally impart constructive notice of matters affecting title to the subject property, any interest therein or encumbrances thereon; (B) disclose executions, court proceedings, pending suits, and liens of any kind affecting the title to said real estate; and (C) judgments or transcripts of judgments filed against any of the parties appearing within the chain of title; (2) the records of the court clerk for the county in which the subject property is located which: (A) disclose executions, court proceedings, pending suits, and liens of any kind affecting the title to said subject property; and (B) judgments or transcripts of judgments against any of the parties appearing within the chain of title. (3) all ad valorem tax liens due and unpaid against said real estate, tax sales thereof unredeemed, tax deeds, unpaid special assessments certified to the office of the county treasurer for the county in which the subject property is located due and unpaid, tax sales thereof unredeemed, and tax deeds given thereon, and unpaid personal property taxes which are a lien on said real estate*.

[32] 12 Okla. Stat. §728 and Okla. Dist. Ct. R. 30(B)

[33] The list published by the Oklahoma Supreme Court of "Full Faith and Credit of Tribal Courts" (April 18, 2019) is found at: https://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=458214

[34] 25 C.F.R. 150.11 established a federal system for tribal trust records within the Bureau of Indian Affairs' Land Title Records Office (LTRO). These records are public records and the tribes participate in the maintenance of these records under agreement with the BIA. These records are not defined as "public records" under Oklahoma state law.

[35] "Without an integrated formal property system, a modern market economy is inconceivable. Had the advanced nations of the West not integrated all representations into one standardized property system and made it accessible to all, they could not have specialized and divided labor to create the expanded market network and capital that have produced their present wealth. The inefficiencies of non-Western markets have a lot to do with the fragmentation of their property arrangements and the unavailability of standard representations." Hernando de Soto, The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else

[36] Title 16 Okla. Stat. Appendix §1.1 (Commonly referred to as the Oklahoma Title Examination Standards)

[37] www.alta.org

[38] See 74 Okla. Stat. §1221 Acknowledgment of federal recognition of Tribes – Cooperative Agreements – Surface water and/or groundwater resources

[39] *Brendale v. Confederated Tribes and Bands of Yakima Nati*on, 492 U.S. 408 (1989). See also, *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980) and *Warrant Trading Post Co. v. Arizona Tax Commission*, 380 U.S. 685 (1965).

[40] *McGirt*, id., dissenting opinion of Justice Roberts at 1.

[41] For a list of all tribal compacts and agreements between the various Oklahoma tribes and the State of Oklahoma, visit the Oklahoma Secretary of State's website at https://www.sos.ok.gov/gov/tribal.aspx