

*State of North Carolina
Office of Administrative Hearings*

Certification

I hereby certify the attached (2 sheets) to be a true copy of the

Final Decision Order of Dismissal, in case 10 DOT 07047, "Rodney Dale; Class, Petitioner vs. North Carolina Department of Transportation, Respondent".

The original of which is filed in this office in conformance with Chapter 150B of the General Statutes of the State of North Carolina.

In witness whereof, I authorize this certification and affix the official seal of the North Carolina Office of Administrative Hearings at Raleigh, This 3rd day of November 2011.

Julian Mann, III

Chief Administrative Law Judge, Director

By: *Kim Hausen*
Kim Hausen
Chief Hearings Clerk



NORTH CAROLINA

FILED

COUNTY OF CABARRUS

2011 JAN 19 P 1:07

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
10 DOT 7047

RODNEY-DALE; CLASS,
Petitioner,

OFFICE OF
ADMINISTRATIVE
HEARINGS

**FINAL DECISION
ORDER OF DISMISSAL**

v.

NORTH CAROLINA DEPARTMENT
OF TRANSPORTATION,
Respondent.

Upon consideration of motions to dismiss filed by Respondents North Carolina Department of Transportation and Dallas Police Department, the undersigned hereby GRANTS said motions and further dismisses the matter on the Court's own motion with respect to ALL respondents as follows:

FINDINGS OF FACT

1. On October 25, 2010, Petitioner filed a Petition for Contested Case Hearing with the Office of Administrative Hearings (OAH). The matter has been set before the undersigned for determination.

2. Petitioner has asserted a dispute between himself and the North Carolina Department of Transportation (NCDOT), the Dallas Police Department, and a North Carolina Motor Vehicles License Plate Agency in Gastonia, N.C. Petitioner seeks review by OAH under Article 3 of Chapter 150B of the North Carolina General Statutes.

3. On November 16, 2010, Respondent NCDOT moved to dismiss the case on the grounds that OAH lacks subject matter jurisdiction to hear a contested case against NCDOT. On November 18, 2010, Respondent Dallas Police Department also filed a motion to dismiss based on lack of subject matter jurisdiction.

4. Petitioner was afforded ten (10) days to respond to Respondent's motion in accordance with 26 N.C.A.C. 3.0115(a), and has responded with the following: a "Rebuttal" filed sometime on or before November 23, 2010 and another "Rebuttal" filed on or before November 24, 2010.

5. Respondent's motion is now ready for a determination without hearing, pursuant to 26 N.C.A.C. 3.0115(b).

CONCLUSIONS OF LAW

1. Except as otherwise provided by statute, the North Carolina Department of Transportation is exempt from the contested case hearing provisions of Chapter 150B of the General Statutes. N.C. Gen. Stat. § 150B-1(e)(9).

2. Accordingly, this Court lacks subject matter jurisdiction over Respondent DOT.

3. Further, the provisions of Chapter 150B were enacted for the express purpose of "establish[ing] a uniform system of administrative rule making and adjudicatory procedures for agencies". N.C.G.S. § 150B-1 (emphasis added). An "agency" is defined, for purposes of Chapter 150B, as follows: "'Agency' means an agency or an officer in the executive branch of the government of this State and includes the Council of State, the Governor's Office, a board, a commission, a department, a division, a council, and any other unit of government in the executive branch. A local unit of government is not an agency." N.C.G.S. § 150B-2(1a).

4. Thus, Dallas Police Department, as a local unit of government, is not an "agency" under Chapter 150B. Moreover, Respondent License Plate Agency is also not an "agency" under Chapter 150B because it is a private entity and does not fall within the executive branch of State government.

5. Therefore, Petitioner's Petition for a Contested Case Hearing must be dismissed with respect to all named respondents.

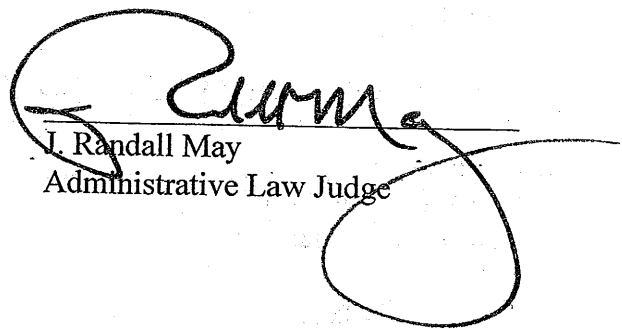
FINAL DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby DISMISSES this contested case petition with prejudice AS TO ALL NAMED RESPONDENTS.

NOTICE

Pursuant to G.S. 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge may commence such appeal by filing a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. The party seeking review must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Decision and Order. Pursuant to G.S. 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 17 day of January, 2011.


J. Randall May
Administrative Law Judge

A copy of the foregoing was sent certified mail-return receipt requested to:

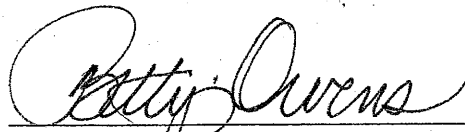
Rodney-Dale; Class
PO Box 435
High Shoals NC 28077
PETITIONER

North Carolina Motor Vehicles License Plate Agency
1471 East Franklin Boulevard
Gastonia NC 28054
RESPONDENT

Penny M. Thrower
Town Attorney, Town of Dallas NC
201 West Second Avenue, Suite F
Gastonia NC 28052
ATTORNEY FOR DALLAS POLICE DEPARTMENT

William P. Hart, Jr.
Assistant Attorney General
N.C. Department of Justice
PO Box 629
Raleigh NC 27602-0629
ATTORNEY FOR RESPONDENT NCDOT

This the 19th day of January, 2011.



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WAKE COUNTY, C.S.C.

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This the 15 day of September, 2011.

Date: 10.6.11