

# A Brief History of the Tobacco Settlement in Oklahoma

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The 1998 national multistate Master Settlement Agreement (MSA) with the major cigarette manufacturers in the U.S. cultivated hope that payments from that settlement would be used to fund proven programs to prevent and reduce tobacco use. By 2002, tobacco prevention funding across all states reached an all-time high of nearly \$750 million per year. However, that early promise was not sustained. Within just 2 years, state funding for tobacco prevention was reduced by more than \$200 million.

Today, states are spending only 5% of annual MSA payments to operate comprehensive, statewide, tobacco prevention and control programs, with wide variability across states. Oklahoma now ranks seventh in the nation for tobacco control funding and stands as one of the few bright spots in an increasingly bleak tobacco control funding landscape.

The historic decision by Oklahoma voters in November 2000 to constitutionally set aside and protect the majority of the settlement dollars in an independent endowment trust fund yielded multiple benefits to residents of our state. The statewide ballot question ensured that only the earnings on investments from the Oklahoma Tobacco Settlement Endowment Trust (TSET) fund could be spent, and only for tobacco prevention, cancer research, and other health-related programs.

The constitution created a detailed governing structure, with separate oversight for the endowment trust fund investment and for the grants and programs funded by the earnings from the endowment. One appointed board oversees the endowment's investments, and the other oversees the expenditures from the fund with the overall purpose of improving the health and quality of life of Oklahomans.

TSET's Board of Investors is a geographically diverse five-member board, chaired by the State Treasurer. The remaining four members are appointed by the Governor, Speaker of the House of Representatives, President ProTempore of the Senate, and State Auditor and Inspector.

TSET's Board of Directors is a seven-member board, whose members are appointed by the Governor, Speaker of the House of Representatives, President ProTempore of the Senate, State Auditor and Inspector, State Superintendent of Public Instruction, Attorney General, and State Treasurer. As specified in the Oklahoma Constitution, members are also appointed to ensure geographic and political representation and diversity. No single elected official, political party, or geographic region of the state can dominate the board's decision making. Funding is not subject to legislative appropriation, but TSET has a statutory responsibility to maintain accountability to the legislature, statewide elected officials, and the people of Oklahoma.

This governing structure has survived the past 14 years, through several state budget crises and changes in political power. Changes to the structure or purpose of the endowment require a constitutional amendment and lie in the hands of Oklahoma voters. The endowment strategy has remained stable as a result of building relationships, leveraging partnerships, and delivering on outcomes.

The development of the Oklahoma TSET reflects the fortuitous intersection of vision and leadership at various levels of state government, as well as unified support by the voluntary organizations involved in tobacco control and health promotion in Oklahoma.

This history began in 1996, when Oklahoma became the 14th state to file a lawsuit against the tobacco industry, after Attorney General Michael Moore of Mississippi filed the first lawsuit in 1994. These lawsuits were based upon the grounds that tobacco companies were knowingly marketing and selling a product that was damaging the health of users and adding significantly to the state's healthcare expenditures.

After several states filed similar lawsuits, the National Association of Attorneys General worked with the tobacco industry to develop the national MSA, which

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was finalized in 1998. Oklahoma's Attorney General, Drew Edmondson, was one of eight attorneys general selected to negotiate the MSA on behalf of the 46 participating states. Edmondson believed the annual MSA payments Oklahoma would receive should be used to improve the health of Oklahomans.

About the same time, leaders in both the Oklahoma House of Representatives and the Senate began discussing strategies to utilize the MSA payments. With the support of House staff, State Representative Jari Askins convened a series of meetings with key stakeholders across the state. Representative Askins and Senator Ben Brown championed a bill to create a statutory fund to receive the MSA dollars. After passage in both chambers, Governor Frank Keating vetoed the bill, stating, "because it is improper to place money in a Special Fund without knowledge of how the monies in the Special Fund will be allocated."

Edmondson became convinced that a statutory structure was too vulnerable to political winds. He believed a constitutional structure would be necessary to ensure the settlement funds would always be used to improve the health of Oklahoma residents. He worked with State Treasurer Robert Butkin to advocate for a structure that would be established as a constitutional body and protected for use by future generations.

By the spring of 1999, a bipartisan supermajority of the legislature referred a constitutional measure to the ballot. In November 2000, the constitutional amendment was overwhelmingly approved by voters, 69%–31%. Until 2006, Oklahoma was the only state to have constitutionally protected the settlement payments—with no "out" clause, such as fiscal emergencies for the state.

As a result of this citizen vote, the Oklahoma Constitution was amended to state that earnings from the endowment should be used to support:

- clinical and basic research and treatment efforts in Oklahoma for the purpose of enhancing efforts to prevent and combat cancer and other tobacco-related diseases;
- cost-effective tobacco prevention and cessation programs;
- programs designed to maintain or improve the health of Oklahomans or enhance the provision of health care services—with an emphasis on programs for children;
- programs and services for the benefit of children, with emphasis on common and higher education, before- and after-school and preschool programs, substance abuse prevention and treatment programs, and other programs and services designed to improve the health and quality of life of children;

- programs designed to enhance the health and well-being of senior adults.<sup>1</sup>

During the first year of operation, the Board of Investors approved a policy to not invest in tobacco companies, a policy that remains in place today. At the same time, under the chairmanship of Dr. Robert McCaffree, the Board of Directors began working with consultants from the Oklahoma City Community Foundation to hold a series of meetings in which interested parties could propose program ideas. The board consulted with the Campaign for Tobacco Free Kids, Robert Wood Johnson Foundation, and other states to explore best practices in tobacco prevention, and to create guiding principles for TSET's strategic plan.

The board agreed to focus funding on grants and programs to improve the health and quality of life of all Oklahomans that are based on the best research available, encourage collaboration and cooperation, encourage community-based services in urban and rural Oklahoma, have measurable outcomes, minimize duplication and administrative expense, and avoid inappropriate influence or conflicts of interest.

In August 2002, the Board of Directors hired the organization's first executive director, Tracey Strader, and voted to devote the endowment's earnings in the early years on preventing and reducing tobacco use. A plan for the program was established based on CDC's *Best Practices for Comprehensive Tobacco Control Programs* and the *Oklahoma State Plan for Tobacco Use Prevention and Cessation*. With this as a foundation, the board began to gradually implement key components of a comprehensive tobacco control program as earnings became available.

The first initiative funded by TSET was the Oklahoma Tobacco Helpline. It was launched in August 2003 on the rationale that (1) the MSA was created to address the costs of smoking; (2) the Helpline could serve any Oklahoman from any part of the state with the available budget; and (3) the programs and strategies that would follow, if successful, would increase quit attempts among smokers. Since 2003, the Helpline has served more than 275,000 Oklahomans, and is ranked first in the nation for reach and effectiveness.

A community-based initiative was launched in 2004, using the Communities of Excellence Plus (CX) framework, an evidence-based program developed by the Tobacco Technical Assistance Consortium (TTAC), in partnership with the American Cancer Society, American Legacy Foundation, and Robert Wood Johnson Foundation. CX is a comprehensive planning process, designed to help local coalitions assess their communities against a set of standard tobacco control indicators, identify and prioritize areas for improvement, and develop a plan for

accomplishing program outcomes. The program was widely disseminated throughout the U.S. beginning in August 2000; since then, more than 40 states have received training, and several states, including Oklahoma, California, Colorado, Nebraska, and Illinois, have incorporated CX elements into their state-funded tobacco control efforts administered by local communities.

This comprehensive program enhanced pre-existing community efforts including the Students Working Against Tobacco (SWAT) youth movement, which was initially funded by a grant from the American Legacy Foundation through the Oklahoma State Department of Health. As earnings from the endowment grew over the years, two additional “waves” of CX programs were funded. In 2008, a statewide counter-marketing campaign, “Tobacco Stops With Me,” was launched, and by 2009 a tobacco-cessation systems initiative was designed to infuse best practices in tobacco dependence treatment into hospitals, mental health and substance abuse programs, and among providers and systems serving the Medicaid population in Oklahoma.

From the beginning, evaluation has been an integral part of each initiative and plays a critical role in refining the program, addressing disparate populations, and identifying effective health communications messages and strategies. Each year, TSET releases an annual report, describing program highlights and documenting program evaluation outcomes.<sup>2</sup>

Ten years after the MSA, Oklahoma had all of the elements of a comprehensive tobacco control program in place. Oklahoma’s path has been slower than other states, but has led to success and sustainability.

As a result of TSET-funded initiatives and strategic partnerships with the Oklahoma State Department of Health and many other individuals, coalitions, and organizations, Oklahoma can proudly proclaim that the endowment is intact, growing, and fulfilling its purpose. The Board of Directors’ commitment to tobacco prevention remains strong. Smoking prevalence and per-capita cigarette consumption rates among youth and adults are the lowest ever recorded in Oklahoma and continue to improve. Quit attempts among smokers are at an all-time high and Oklahoma now has more former smokers than current smokers. Oklahoma’s Helpline leads the nation

in the proportion of state residents who receive evidence-based treatment.

Notably, such progress has been achieved despite very strong preemption clauses written into Oklahoma’s state tobacco laws. For over 20 years, these tobacco industry-supported clauses have prohibited Oklahoma cities and towns from adopting key tobacco control measures effectively implemented by communities in almost every other state. Based upon the experience of other states, Oklahoma’s successes would be much greater if these important local rights were not denied.

The Oklahoma TSET’s accomplishments are the direct result of the initial decision by elected leaders to put the constitutional amendment to a vote of the people. No single entity or intervention is solely responsible for the decline in tobacco use in Oklahoma. However, the sustained funding for programs and grants provided through TSET, when leveraged with expanded partnerships at the state and local level, are serving to reduce tobacco use and improve the health of Oklahomans.

Although Oklahoma still has significant challenges in the area of tobacco control, with rates of smoking still higher than the national average, the state is better positioned than most to take full advantage of the MSA. The promise of an Oklahoma free from preventable illness, early death, and monetary costs caused by tobacco addiction is within our grasp. The articles in this supplement highlight some of the ways that this promise can be achieved.

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