Town & Gown Relations from a College Regent's Perspective

International Municipal Lawyers Association

2022 University Cities Summit

July 28, 2022

By Andy Lester
Partner
Spencer Fane LLP
Tel. 405.753.5911
Email: alester@spencerfane.com

SpencerFane

Andy Lester

A partner in the Oklahoma City office of Spencer Fane LLP, Andy Lester has a civil litigation and appellate practice in both state and federal court. His fields of emphasis include complex business, civil rights, constitutional, higher education, and state and local government law. Among his more recent high profile cases resulting in a published opinion are *State ex rel. Hunter, Attorney General of Oklahoma v. Johnson & Johnson,* 499 P.3d 719, 2021 OK 54 (reversing $465 million verdict and rejecting a $9 billion cross-appeal, finding the manufacturing, marketing, and selling of prescription opioids do not constitute a public nuisance), and *United States ex rel. Janssen v. Lawrence Memorial Hospital,* 949 F.3d 533 (10th Cir. 2020) (dismissing claim under the False Claims Act, 31 U.S.C. §§ 3729, *et seq.,* and explaining its "materiality" requirement).

Lester served on the Oklahoma State Regents for Higher Education, was a member and chairman of the OSU/A&M Board of Regents, served as a member of the Board of Trustees of Eureka College (President Reagan's *alma mater*). As an Adjunct Professor at Oklahoma City University School of Law, he taught State & Local Government, Employment Law, Criminal Law, and International Law. Author of over 100 articles, papers, and speeches on professional and public policy issues, he has published one book, *Constitutional Law and Democracy*, a collection of speeches he gave in 1993 in the former Soviet Union.

He is a past member and former chairman of the Oklahoma Advisory Committee to the U.S. Commission on Civil Rights, which in 2021 published its findings on *Racial Disparities in Policing*. He is a former United States Magistrate Judge for the Western District of Oklahoma. In 1980, he served on President Ronald Reagan's Transition Team for the Equal Employment Opportunity Commission and in 2002, he chaired Governor Brad Henry's Law Enforcement/Corrections Transition Team and helped write Governor Henry's first State budget.

Lester attended Ludwig-Maximilians-Universität in Munich, Germany, received his A.B. from Duke University, and his M.S. in Foreign Service and his J.D. from Georgetown University.

Okla. Const. Art. XIIIA, § 1

- § 1. Oklahoma State System of Higher Education.
- All institutions of higher education supported wholly or in part by direct legislative appropriations shall be integral parts of a unified system to be known as “The Oklahoma State System of Higher Education.”

Oklahoma State Regents for Higher Education
Okla. Const. Art. XIIIA, § 2

- § 2. Oklahoma State Regents for Higher Education - Establishment - Membership - Appointment - Terms - Vacancy - Powers as coordinating board of control.
- There is hereby established the **Oklahoma State Regents for Higher Education**, consisting of nine (9) members, whose qualifications may be prescribed by law. The Board shall consist of **nine (9) members appointed by the Governor, confirmed by the Senate**, and who shall be removable only for cause, as provided by law for the removal of officers not subject to impeachment. … [T]he term of office of said Regents shall be nine years or until their successors are appointed and qualified.
- The Regents shall constitute **a co-ordinating board of control** for all State institutions described in Section 1 hereof, with the following specific powers: (1) it shall prescribe standards of higher education applicable to each institution; (2) it shall determine the functions and courses of study in each of the institutions to conform to the standards prescribed; (3) it shall grant degrees and other forms of academic recognition for completion of the prescribed courses in all of such institutions; (4) it shall recommend to the State Legislature the budget allocations to each institution, and; (5) it shall have the power to recommend to the Legislature proposed fees for all of such institutions, and any such fees shall be effective only within the limits prescribed by the Legislature.

Board of Regents for the Oklahoma Agricultural & Mechanical Colleges
Okla. Const. Art. VI, § 31a

- § 31a. Board of Regents for agricultural and mechanical schools and colleges - Members - Vacancies - Removal - Terms.
- There is hereby created a **Board of Regents for the Oklahoma Agricultural and Mechanical College and all Agricultural and Mechanical Schools and Colleges** maintained in whole or in part by the State. The Board shall consist of **nine (9) members, eight (8) members to be appointed by the Governor by and with the advice and consent of the Senate, a majority of whom shall be farmers, and the ninth member shall be the President of the State Board of Agriculture**. Any vacancy occurring among the appointed members shall be filled by appointment of the Governor by and with the advice and consent of the Senate. The members of the Board shall be removable only for cause as provided by law for the removal of officers not subject to impeachment. The members shall be appointed for terms of eight (8) years each, with one term expiring each year…. Provided that no State, National or County officer shall ever be appointed as a member of said Board of Regents until two years after his tenure as such officer has ceased.

Institutions Governed by the A&M Regents

- Oklahoma State University
- Langston University
- Oklahoma Panhandle State University
- Northeastern Oklahoma A&M College
- Connors State College

Board of Regents of the University of Oklahoma
Okla. Const. Art. XIII, § 8

- § 8. Board of Regents of University of Oklahoma.
- The government of the University of Oklahoma shall be vested in a Board of Regents consisting of seven members to be appointed by the Governor by and with the advice and consent of the Senate. The term of said members shall be for seven years….
- Appointments for filling vacancies occurring on said Board shall be made by the Governor with advice and consent of the Senate and said appointments to fill vacancies shall be for the residue of the term only.
- Members of the Board of Regents of the University of Oklahoma shall be subject to removal from office only as provided by law for the removal of elective officers not liable to impeachment.

Institutions Governed by the University of Oklahoma Regents

- University of Oklahoma
- Cameron University
- Rogers State University

Board of Regents for the Regional University System of Oklahoma
Okla. Const. Art. XIIIB, § 1

- § 1. Board of Regents of Oklahoma Colleges - Creation, members, terms, etc.
- There is hereby created a Board to be known as the Board of Regents of Oklahoma Colleges, and shall consist of **nine (9) members to be appointed by the Governor, by and with the consent of the Senate….** [T]he ninth (9th) member shall be **the State Superintendent of Public Instruction**. Their successors shall be appointed for a term of nine (9) years…. Each member of the Board, except the State Superintendent shall receive as compensation the sum of Ten ($10.00) Dollars per day, not to exceed sixty (60) days in any fiscal year while he is actually engaged in the performance of duties…. Any member who fails to attend a board meeting more than two (2) consecutive meetings without the consent of a majority of the Board, his office shall be declared vacant by the Governor and his successor shall be appointed as provided herein.

Institutions Governed by the Regional University System of Oklahoma Regents

- University of Central Oklahoma
- Northwestern Oklahoma State University
- Southwestern Oklahoma State University
- Northeastern Oklahoma State University
- Southeastern Oklahoma State University
- East Central University

Morrill Act of 1862
7 U.S.C. §§ 301, *et seq.*

- Funds dedicated to: “the endowment, support, and maintenance of at least one **college where the leading object shall be, without excluding other scientific and classical studies and including military tactics, to teach** such branches of learning as are related to **agriculture and the mechanic arts**, in such manner as the legislatures of the States may respectively prescribe, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life.”
- 7 U.S.C. § 304

Second Morrill Act of 1890
7 U.S.C. §§ 321, *et seq.*

- "No money shall be paid out under this subchapter to any State or Territory for the support or maintenance of a college where a distinction of race or color is made in the admission of students…."
- 7 U.S.C. § 323

70 O.S. § 3403

- The state educational institution located at Langston, known and designated as Langston University at Langston, shall continue at the same location and its official name shall be **Langston University**.



Oklahoma's Public Institutions of Higher Education

- Cameron University
- Carl Albert State College
- Connors State College
- East Central University
- Eastern Oklahoma State College
- Langston University
- Murray State College
- Northeastern Oklahoma A&M College
- Northeastern State University
- Northern Oklahoma College
- Northwestern Oklahoma State University
- Oklahoma City Community College
- Oklahoma Panhandle State University
- Oklahoma State University
- Redlands Community College
- Rogers State University
- Rose State College
- Seminole State College
- Southeastern Oklahoma State University
- Southwestern Oklahoma State University
- Tulsa Community College
- University of Central Oklahoma
- University of Oklahoma
- University of Science and Arts of Oklahoma
- Western Oklahoma State College

Best Practices to Foster Good Town-Gown Relations

- Get to know each other (personalities and relationships are crucial)
- Understand each other's issues
- Encourage frequent discussions among leadership teams
- Foster a spirit of cooperation
- Cultivate community involvement (both ways)
- Pursue mutually beneficial goals
- Avoid toxic conduct
- Listen, listen, listen

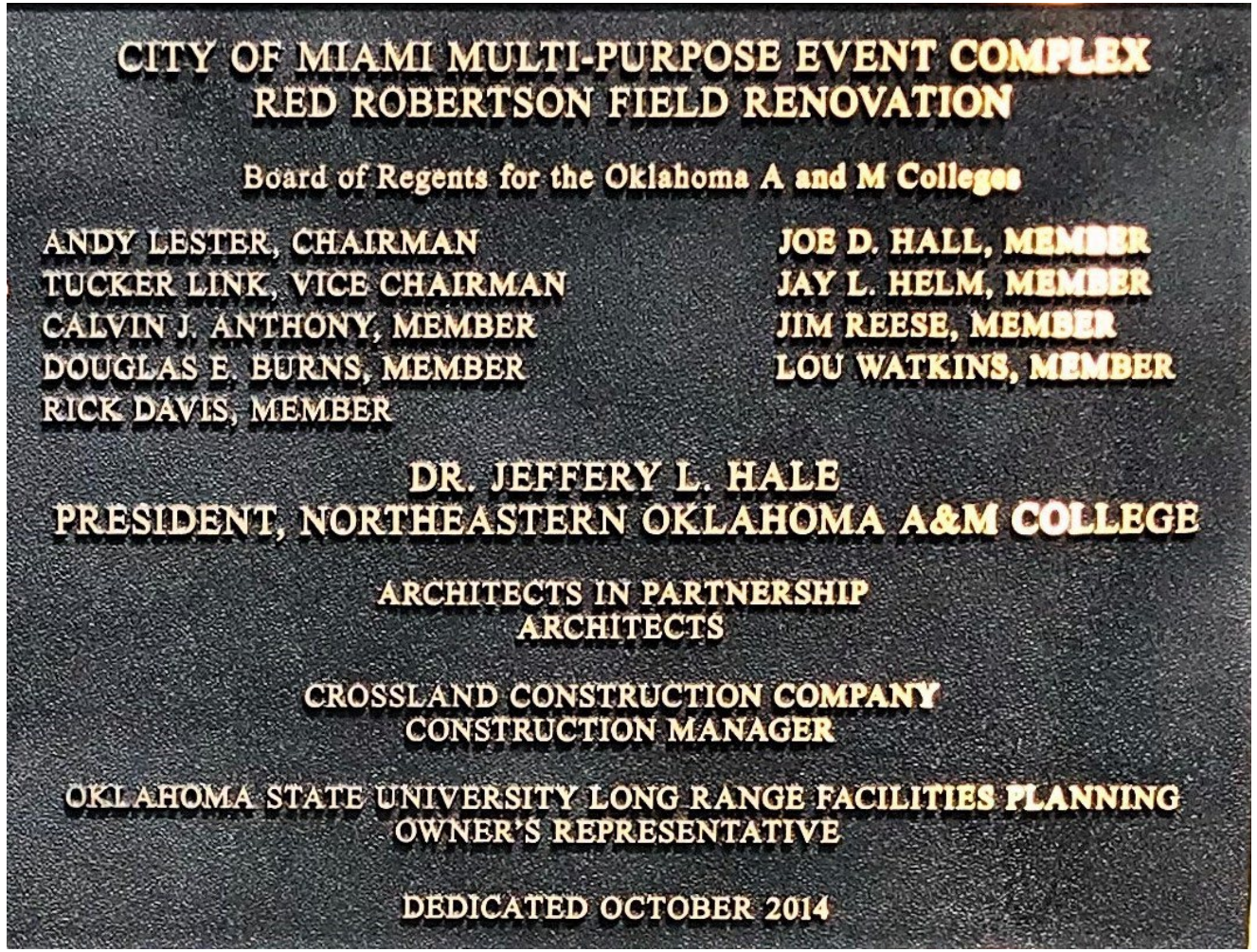
Red Robertson Field, NEO A&M College



Red Robertson Field, NEO A&M College



Red Robertson Field, NEO A&M College



State ex rel. Board of Regents v. McCloskey Bros., Inc., 2009 OK 90, 227 P.3d 133

- ¶16 Pursuant to the Oklahoma Constitution, art. 6, §31A and 70 O.S. 2001 §3411, **the Regents as a public body corporate possess the power of eminent domain**. Oklahoma State University is a public corporation, and it is led by its Board of Regents. The Regents are public officers and their eligibility and terms of appointment are provided by 70 O.S. Supp. 2003 §3409. Among the Regents' many powers and duties is the authority to acquire and take title to real property through legal proceedings, including the authority to exercise the power of eminent domain/condemnation.

State ex rel. Board of Regents v. McCloskey Bros., Inc., 2009 OK 90, 227 P.3d 133

- ¶20 Where the question of right or title to office is put in issue, the appropriate remedy is an **action in the nature of *quo warranto***.… *Quo warranto* requires the attorney general, district attorney, or a contestant for the office to challenge the incumbent's title, and **a collateral attack by a private individual is not permitted**.

State ex rel. Board of Regents v. McCloskey Bros., Inc., 2009 OK 90, 227 P.3d 133

- ¶22 The rule that private individuals may not do indirectly or collaterally what they cannot do directly has been illustrated in the doctrine of *de facto* corporations and *de facto* officers. Under the *de facto* doctrine, a corporation's or municipal corporation's actions will be upheld as valid when: 1) a valid law exists authorizing the corporation; 2) a bone fide attempt to organize under such law is made; and 3) an actual good faith exercise of corporate powers.
- ¶25 The same rationale is applicable here, where: 1) the corporate body, the Regents, are undisputedly a public corporation which validly exists pursuant to the Okla. Const. art 6, §31A;[60] 2) a bona fide attempt has been made to organize under such law; 3) all of the Regents were in actual possession of the office under color of title; and 4) they exercised their corporate powers in good faith. The Regents, collectively, as a corporate entity were *de facto*, and the Regents, individually, as officers of that entity were *de facto*. The fact that this is an eminent domain proceeding is of no consequence. Accordingly, we hold that the standing is two-pronged: although the landowner has standing to challenge the taking, such standing does not include the issue of whether the Regents were formed in compliance with the Oklahoma Constitution. And, even if it did, the Regents' actions were valid as *de facto* Regents.

Oklahoma State University

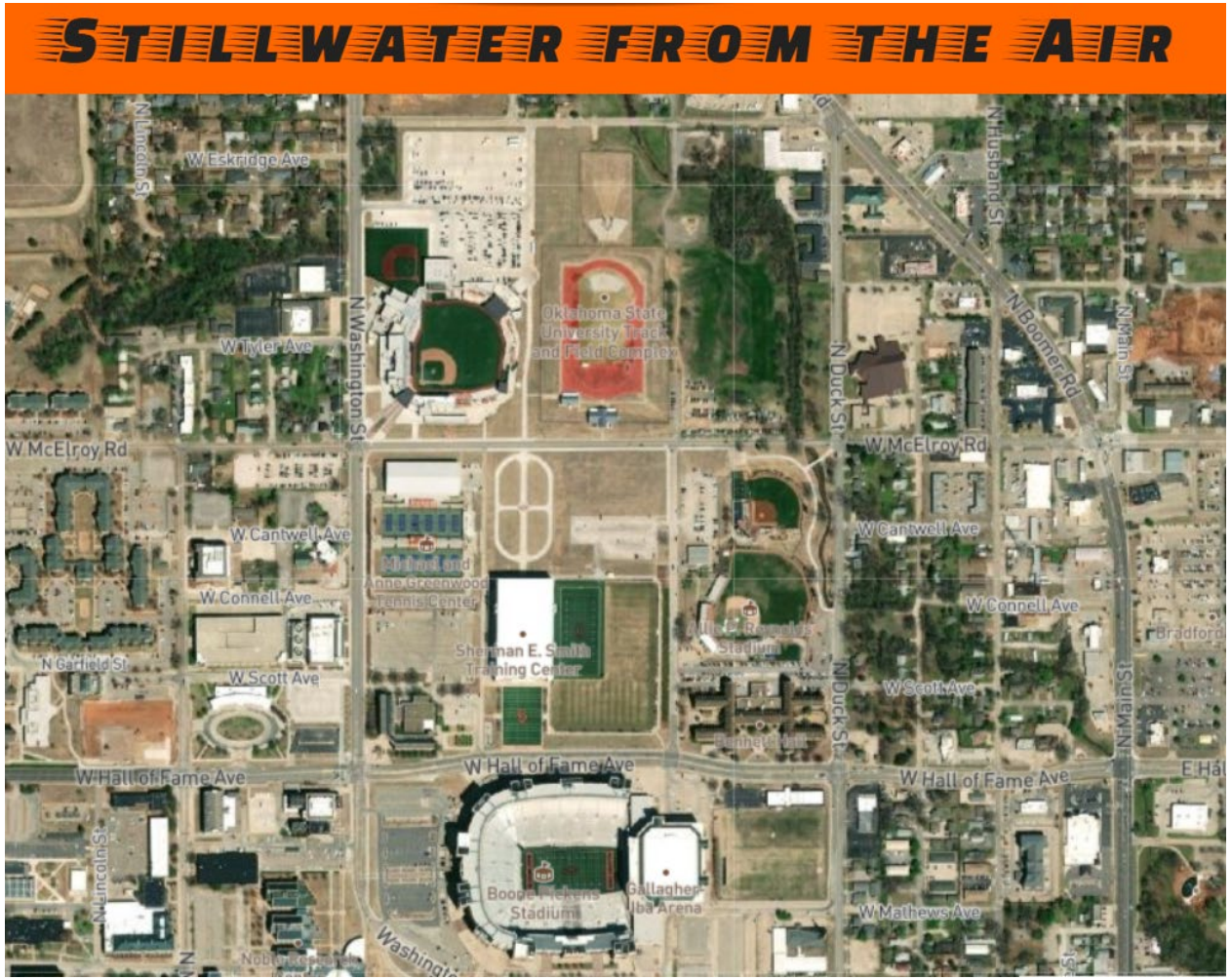


Oklahoma State University Athletic Village – 2006



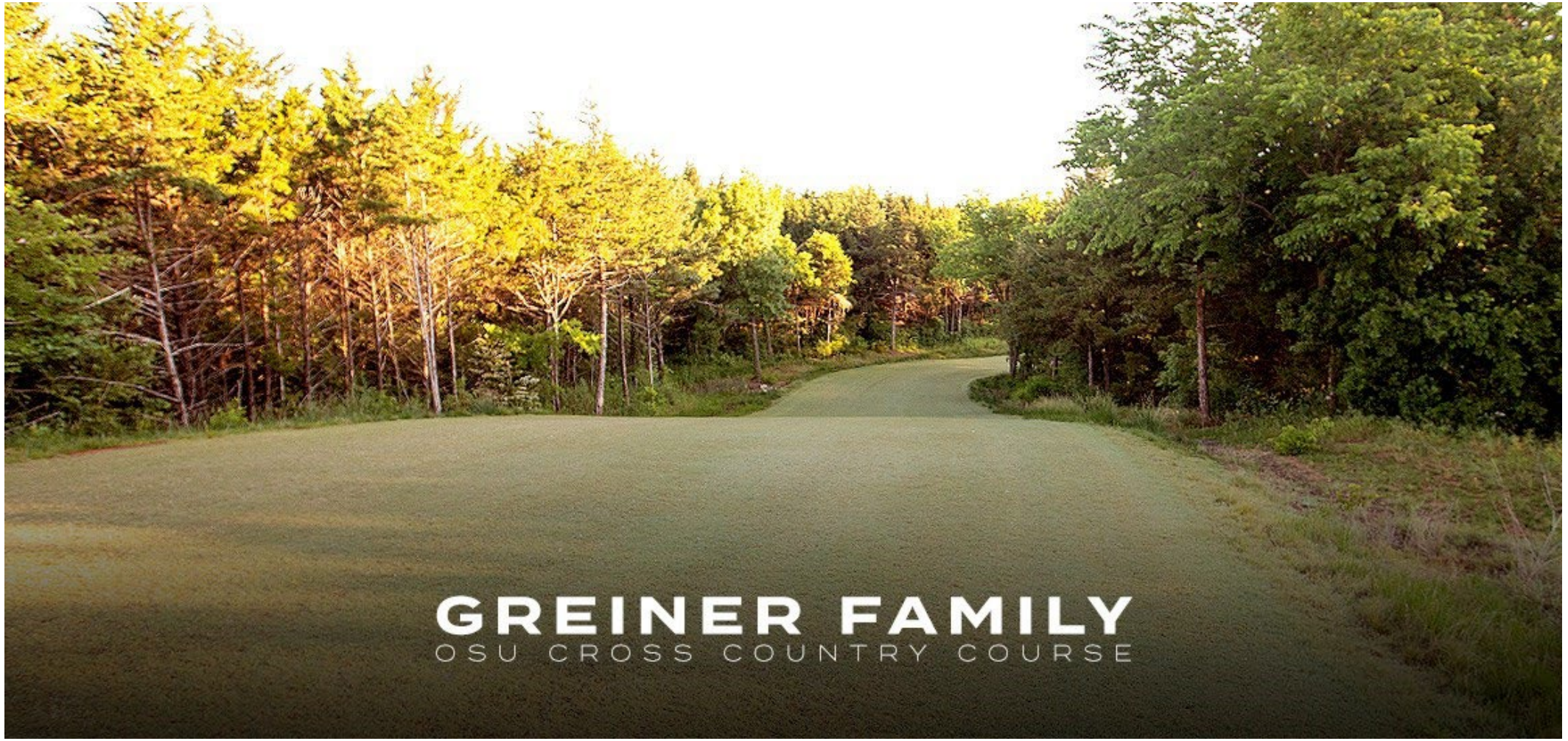
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Oklahoma State University Athletic Village – 2018



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Greiner Family OSU Cross Country Course



Greiner Family OSU Cross Country Course



Neal Patterson Stadium



Neal Patterson Stadium



Michael & Anne Greenwood Tennis Center



Michael & Anne Greenwood Tennis Center



Michael & Anne Greenwood Tennis Center



O’Brate Stadium



O’Brate Stadium



O’Brate Stadium



Sherman E. Smith Training Center



Sherman E. Smith Training Center



Boone Pickens Stadium



Boone Pickens Stadium



Boone Pickens Stadium



Stillwater Regional Airport



SWO-DFW

