



State of North Carolina

Department of Justice
PO Box 629
Raleigh, North Carolina
27602

February 11, 2011

REPLY TO: WILLIAM P. HART, JR.
CRIME CONTROL & MOTOR VEHICLES SECTION
TELEPHONE NO. (919) 716-6650
FAX NO. (919) 716-6708

ROY COOPER
ATTORNEY GENERAL

The Honorable N. Lorrin Freeman
Wake County Clerk of Superior Court
WAKE COUNTY GOVERNMENT
Raleigh, North Carolina 27602
COURIER NO.: 51-91-00

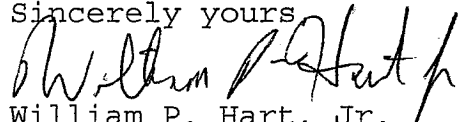
Re: *Rodney Dale Class v. NC Department of Transportation, et al*
Wake County File No.: 11 CVS 1559

Dear Ms. Freeman:

Enclosed please find Respondent's Motion to Dismiss to be filed in the above-captioned matter. It would be appreciated if you would file the original and return the copy to me with the filing date stamped thereon. A self-addressed envelope is enclosed for your convenience.

Thank you for your time and assistance in this matter.

Sincerely yours,


William P. Hart, Jr.
Assistant Attorney General

WPH/kh

Enclosures

cc: Rodney Dale Class
Post Office Box 435
High Shoals, North Carolina 28077

N.C. Motor Vehicle License Plate Agency
1471 East Franklin Boulevard
Gastonia, North Carolina 28054

Pennie M. Thrower
Town Attorney, Town of Dallas, North Carolina
201 West Second Avenue, Suite F
Post Office Box 279
Gastonia, North Carolina 28053-0279

RODNEY DALE CLASS,)	
Petitioner,)	
)	
v.)	<u>MOTION TO DISMISS</u>
)	
NORTH CAROLINA DEPARTMENT OF)	
TRANSPORTATION, et al.,)	
Respondents.)	

NOW COMES Respondent North Carolina Department of Transportation, by and through counsel, moving to dismiss this matter as follows:

MOTION TO DISMISS

Respondent North Carolina Department of Transportation (NCDOT) moves to dismiss this matter as to all named respondents for lack of subject matter jurisdiction, pursuant to the North Carolina Rules of Civil Procedure and Chapter 150B of the General Statutes.

Petitioner seeks judicial review of a final agency decision pursuant to N.C.G.S. § 150B-43, et seq. Under N.C.G.S. § 150B-51(d), this Court is expressly permitted to enter "any order allowed by G.S. 1A-1, Rule 12(c) or Rule 56" since Petitioner's petition was dismissed for lack of subject matter jurisdiction by Administrative Law Judge J. Randall May.

Neither Respondent NCDOT nor the other respondents named by Petitioner are subject to jurisdiction under the contested case provisions of Chapter 150B. First, NCDOT is expressly exempted from these provisions by N.C.G.S. § 150B-1(e)(8) "except as provided in G.S. 136-29" (which does not apply in this case). Moreover, no local unit of government or independent State contractor is covered by Chapter 150B. See N.C.G.S. § 150B-2(1a). Thus, there is no jurisdiction over Respondents Town of Dallas, N.C. or North Carolina Motor Vehicle License Plate Agency in Gastonia, N.C.

Because there is no subject matter jurisdiction over respondents under the contested case provisions of Chapter 150B, this Court similarly cannot exercise jurisdiction over respondents upon Petitioner's appeal. Accordingly, Respondent respectfully requests this Court dismiss this matter with

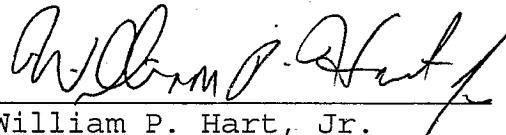
prejudice as to all parties pursuant to Civil Procedure Rules 12(b)(1) and 12(c).

WHEREFORE, Respondent prays to the Court:

1. That this matter be dismissed with prejudice as to all respondents.
2. That all costs be taxed against Petitioner.

Respectfully submitted, this the 17th day of February, 2011.

ROY COOPER
Attorney General



William P. Hart, Jr.
Assistant Attorney General
N.C. Department of Justice
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CERTIFICATE OF SERVICE

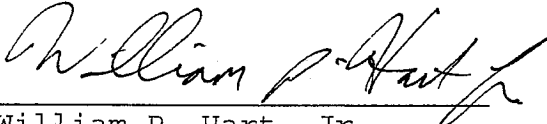
This is to certify that the undersigned has this date served this MOTION TO DISMISS in the above entitled action upon all other parties by depositing a copy hereof in a postpaid wrapper in a post office or official depository under the exclusive care and custody of the United States Post Office Department properly addressed to all other parties, respectively, as follows:

Rodney Dale Class
P.O. Box 435
High Shoals, North Carolina 28077

N.C. Motor Vehicle License Plate Agency
1471 E. Franklin Blvd.
Gastonia, North Carolina 28054

Pennie M. Thrower
Town Attorney
Town of Dallas, N.C.
201 W. Second Ave., Ste. F
P.O. Box 279
Gastonia, North Carolina 28053-0279

This the 17th day of February, 2011.



William P. Hart, Jr.
Assistant Attorney General