



ORIGINAL

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

GENTNER DRUMMOND, Attorney General for the State of Oklahoma, ex rel. STATE OF OKLAHOMA,

Petitioner,

v.

OKLAHOMA STATEWIDE VIRTUAL CHARTER SCHOOL BOARD; ROBERT FRANKLIN, Chairman of the Oklahoma Statewide Virtual Charter School Board for the First Congressional District; WILLIAM PEARSON, Member of the Oklahoma Statewide Charter School Board for the Second Congressional District; NELLIE TAYLOE SANDERS, Member of the Oklahoma Statewide Charter School Board for the Third Congressional District; BRIAN BOBEK, Member of the Oklahoma Statewide Charter School Board for the Fourth Congressional District; and SCOTT STRAWN, Member of the Oklahoma Statewide Charter School Board for the Fifth Congressional District,

Respondents.

FILED
SUPREME COURT
STATE OF OKLAHOMA

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PETITIONER'S APPLICATION TO ASSUME ORIGINAL JURISDICTION AND PETITION FOR WRIT OF MANDAMUS AND DECLARATORY JUDGMENT

Petitioner, Gentner Drummond, Attorney General for the State of Oklahoma, on behalf of and in the interests of the State of Oklahoma, respectfully requests this Court assume original jurisdiction and issue a writ of mandamus compelling the Oklahoma Statewide Virtual Charter School Board (the "Board"); Robert Franklin, chairman of the Board; William Pearson, Nellie Tayloe Sanders, Brian Bobek, and Scott Strawn, members of the Board, to fulfill their legal duties and cancel the Board's illegal contract with St. Isidore of Seville Virtual Charter School ("St. Isidore") executed on October 16, 2023. Moreover, Petitioner respectfully requests this Court

issue any and all other relief it deems appropriate, including a declaratory judgment, to ensure the unlawful behavior of the Board desists.

In support of the Petitioner's Application and Petition, it shows this Court as follows.

PARTIES

1. Gentner Drummond, duly elected Attorney General for the State of Oklahoma, brings this original jurisdiction action on behalf of the State of Oklahoma pursuant to his authority to "initiate . . . any action in which the interests of the state or the people of the state are at issue" OKLA. STAT. tit. 74, § 18b(A)(3). The Attorney General, being the chief law officer of the State, is generally "the proper party to maintain litigation to enforce a matter of public interest." *State ex rel. Howard v. Okla. Corp. Comm'n*, 1980 OK 96, ¶ 35, 614 P.2d 45, 52.

2. Respondent Oklahoma Statewide Virtual Charter School Board, having the "sole authority to authorize and sponsor statewide virtual charter schools" in Oklahoma, is comprised of five voting members. OKLA. STAT. tit. 70, § 3-145.1(A).

3. Respondent Robert Franklin serves as Chairman and voting member of the Oklahoma Statewide Virtual Charter School Board and is named in his official capacity.

4. Respondent William Pearson serves as a voting member of the Oklahoma Statewide Virtual Charter School Board and is named in his official capacity.

5. Respondent Nellie Tayloe Sanders serves as a voting member of the Oklahoma Statewide Virtual Charter School Board and is named in her official capacity.

6. Respondent Brian Bobek serves as a voting member of the Oklahoma Statewide Virtual Charter School Board and is named in his official capacity.

7. Respondent Scott Strawn serves as a voting member of the Oklahoma Statewide Virtual Charter School Board and is named in his official capacity. Scott Strawn claimed to have

resigned from the Board at the conclusion of the October 9, 2023 meeting. However, despite this public statement, he signed the unlawful contract on October 15, 2023. *See* Pet. App. Vol. I at 21.

8. The unlawful contract with St. Isidore is void *ab initio*. As a result, a writ a mandamus has not been sought against this illegitimate state actor.

THE COURT'S JURISDICTION

9. The Petitioner seeks relief against the Board, which is created by law. *See* OKLA. STAT. tit. 70, § 3-145.1. Petitioner's requested relief is within this Court's original jurisdiction, discretionary authority, and superintending control, OKLA. CONST. art. VII, § 4 ("The original jurisdiction of the Supreme Court shall extend to a general superintending control over all inferior courts and all Agencies, Commissions and Boards created by law.").

10. Petitioner seeks a writ of mandamus to compel the Board to rescind its virtual charter school contract ("the Contract") with St. Isidore—executed on October 16, 2023—because such a contract is in violation of the U.S. Constitution as well as Oklahoma's Constitution, laws and regulations. The Oklahoma Constitution and Oklahoma Statutes grant this Court power to issue writs of mandamus to compel a board's performance of an act specifically enjoined by law as a duty, resulting from an office, trust, or station. *See id.*; OKLA. STAT. tit. 12, § 1451.

11. Petitioner additionally seeks declaratory relief to establish that the Board's approval of a sectarian virtual charter school is unlawful and violates Board Members' oath of office. This Court's "[j]urisdiction to grant declaratory relief may be assumed (1) in matters of public interest where there is (2) an element of urgency or a pressing need for an early decision." *Fent v. Contingency Rev. Bd.*, 2007 OK 27, ¶ 11, 163 P.3d 512, 521 (citations omitted). The necessary prongs for this Court's exercise of declaratory relief in this matter are certainly met here.

12. It is self-evident that the funding of public schools, and importantly here, the illegal funding of a sectarian public school is a matter of *publici juris*. Moreover, the Contract commences

July 1, 2024. *See* Pet. App. Vol. I at 4; § 3.2. State appropriations, which will imminently be allocated to the sponsored school, would derive from the FY 2025 budget passed mere months from the filing of the above-entitled cause. These appropriations will undoubtedly be shifted or redistributed from legitimate public schools to St. Isidore.

13. Even more concerning, the Board's unlawful action puts at risk the billion plus dollars in federal education funds the State receives on a yearly basis. *See e.g.*, 20 U.S.C. §§ 1234c, 6311, 7221i, and 7842.

14. Although an Oklahoma County District Court case—CV-2023-1857—is also challenging the Board's actions relevant to this matter, the urgency with which this Court may act cannot be mirrored by the district court. *See Edmondson v. Pearce*, 2004 OK 23, ¶ 12, 91 P.3d 605, 614, *as corrected* (July 28, 2004) (This Court, addressing the difficulty to detect the immediacy theme that runs through most of its original jurisdiction actions, still assumed original jurisdiction to determine the constitutionality of an act banning cockfighting based, in part, on the “nature of the controversy” before it.). Moreover, the district court matter will not address this conflict between the Oklahoma Attorney General and the Board. This Court has previously provided declaratory relief to resolve “inter-governmental legal claims” such as those relevant here. *See Ethics Comm'n of State of Okla. v. Cullison*, 1993 OK 37, ¶ 7, 850 P.2d 1069, 1073–74 (“We conclude that providing a form of declaratory relief to resolve a claimed intolerable conflict between the Ethics Commission and the Legislature is consistent with those situations where this court has provided a remedy to resolve inter-governmental legal claims within the discretionary superintending jurisdiction of this court.”).

15. Aside from the extreme public interest associated with the nature of this controversy—public money being directly applied to a sectarian school—the Board's action of sponsoring St. Isidore paves the way for an onslaught of sectarian applicants for charters in

violation of Oklahoma law. *See e.g., Prescott v. Okla. Capitol Pres. Comm'n*, 2015 OK 54, ¶ 3, 373 P.3d 1032, 1045 (Gurich, J., concurring) (after installation of the Ten Commandments on Capitol grounds, “the Oklahoma Capitol Preservation Commission was forced to put a moratorium on monument requests because numerous groups either applied to have their own symbols erected or threatened litigation.”). This Court’s assumption of jurisdiction in this matter is necessary to address this serious concern.

16. Thus, jurisdiction in this Court is proper.

PETITION FOR WRIT OF MANDAMUS AND DECLARATORY JUDGMENT

17. “St. Isidore of Seville Catholic Virtual School” is an illegally state-sponsored virtual charter school. It executed the contract for sponsorship with the Board on October 16, 2023 (the “Contract”). *See* Pet. App. Vol. I at 2–22. St. Isidore, in its eventually approved revised application for initial authorization as an Oklahoma virtual charter school, expressed its vision to “create, establish, and operate the [charter school] as a Catholic School.” Pet. App. Vol. I at 92. Moreover, the intended charter school would “participate[] in the evangelizing mission of the Church” *Id.* The Contract specifies that it commences on July 1, 2024. *See* Pet. App. Vol. I at 4, § 3.2. Therefore, St. Isidore will begin receiving public money imminently if this Court does not assume original jurisdiction and compel the Board to follow its plain legal duty and rescind its illegal contract with St. Isidore.

18. On June 5, 2023, after rejecting its first application, the Board approved by a 3–2 vote the St. Isidore of Seville Catholic Virtual School’s revised application for initial authorization against the advice of the Oklahoma Attorney General. *See* Pet. App. Vol. II at 452. This action, however, did not complete the Board’s sponsorship “application cycle” process set forth in OKLA. ADMIN. CODE 777: 10-3-3(a)(1–8). Specifically, Subsection 8 of that regulation requires the “[n]egotiation and execution of a contract for sponsorship.” *Id.*

19. On October 9, 2023, the Board by a 3–2 vote approved the St. Isidore of Seville Catholic Virtual Schools’ contract for sponsorship. The votes in favor of the Contract are evidenced by the signatures of the sponsoring Board members on the signature page of the Contract. *See* Pet. App. Vol. I at 21. Pursuant to OKLA. STAT. tit. 70, § 3-135, the Contract fully incorporates the Application.

20. The Contract was subsequently executed on October 16, 2023.

21. The executed Contract did not take the form of the Board-approved “model contract,” meaning the Board “negotiat[ed] [] contract terms or add[ed] [] terms to the contract for sponsorship.” OKLA. ADMIN. CODE 777: 10-3-3(g). To do so, according to the Board’s rules, the added terms must be “in compliance with applicable state, federal, local, and/or tribal law” *Id.* They are not.

22. Oklahoma law requires the Board to “[e]stablish a procedure for accepting, approving and disapproving statewide virtual charter school applications . . . which minimally meet the procedures set forth in the Oklahoma Charter Schools Act” OKLA. STAT. tit. 70, § 3-145.3(A)(2). Relevant here, the Oklahoma Charter Schools Act prescribes that a “charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations. A sponsor may not authorize a charter school or program that is affiliated with a nonpublic sectarian school or religious institution” *Id.* at § 3-136(A)(2). Thus, the Board’s decision to sponsor St. Isidore, which will “participate[] in the evangelizing mission of the Church,” violates state law.

23. Concomitant Oklahoma Constitutional provisions further support the invalidity of the Board’s action to sponsor St. Isidore. *See e.g.*, OKLA. CONST. art. I, § 5 (“a system of public schools . . . shall be open to all the children of the state and free from sectarian control”); *see also id.* at art. II, § 5 (“No public money . . . shall ever be appropriated . . . or used, directly or

indirectly, for the use, benefit, or support of any sect, church, denomination, or system of religion . . . or sectarian institution . . .). Justices of this Court have noted that while the framers of Oklahoma’s Constitution were men of faith, the structural organization of the preceding Sections was no coincidence in the framers’ calculus of providing for a strong separation of church and state. *See Prescott*, 2015 OK 54, ¶¶ 4, 6, 373 P.3d 1032, 1037–38 (Taylor, J. concurring, with whom Gurich, J. joins).

24. The framers’ intent to maintain Oklahoma public schools that are nonsectarian was carried forward by the Oklahoma Legislature when it, in the Oklahoma Charter Schools Act, defined “charter school[s]” as “public school[s]” OKLA. STAT. tit. 70, § 3-132(D). This makes sense because the Oklahoma Charter Schools Act does not upend OKLA. CONST. art. I, § 5 and its mandate for a system of public schools free from sectarian control. The Act’s purpose supplements the State’s constitutional mandate. *See e.g.*, OKLA. STAT. tit. 70, § 3-131.

25. The Board’s failure to fulfill its plain legal duty to follow Oklahoma law by sponsoring a sectarian virtual charter school applicant cannot be permitted. Thus, a writ of mandamus compelling the Board to rescind its illegal contract for sponsorship of St. Isidore and declaratory relief establishing that such sponsorship was unlawful are necessary and within this Court’s discretion.

CONCLUSION

Petitioner respectfully requests this Court assume original jurisdiction of this matter and, for reasons more fully set forth in Petitioner’s Brief in Support of Application to Assume Original Jurisdiction and Petition for Writ of Mandamus and Declaratory Judgment, filed contemporaneously herewith, issue a writ of mandamus to command the Board to fulfill its plain legal duties by cancelling the illegal contract for sponsorship of St. Isidore of Seville, and issue a declaratory judgment consistent therewith. In the alternative, Petitioner respectfully requests this

Court issue any other relief it deems appropriate in order to ensure that the Board's illegal contract with St. Isidore of Seville is rightfully cancelled.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of October 2023 a true and correct copy of the foregoing instrument was mailed by depositing it in the U.S. Mail, postage prepaid to the following:

Robert Franklin
William Pearson
Nellie Tayloe Sanders
Brian Bobek
Scott Strawn
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