

NO. 19-0962

IN THE SUPREME COURT OF TEXAS

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**ODYSSEY 2020 ACADEMY, INC.**  
*Petitioner,*

v.

**GALVESTON CENTRAL APPRAISAL DISTRICT**  
*Respondent.*

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On Petition for Review from the Fourteenth Court of Appeals  
Houston, Texas, No. 14-18-00358-CV

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**GALVESTON CENTRAL APPRAISAL DISTRICT'S  
RESPONSE TO PETITION FOR REVIEW**

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## **STATEMENT OF THE CASE**

Petitioner brought a Petition for Review contesting the denial of an ad valorem tax exemption for property owned by private two Delaware limited liability companies based in Boca Raton, Florida. Petitioner, which subleases the property, sought the exemption as “public property,” relying on Tex. Tax Code § 11.11 and Tex. Educ. Code § 12.128. (C.R. 5-14). In its Petition, Petitioner sought reversal of Respondent’s and Respondent’s Appraisal Review Board’s denial of the requested exemption. *Id.*

Both parties moved for summary judgment in the Trial Court. That Court denied Petitioner’s Motion for Summary Judgment and granted Respondent’s Motion for Summary Judgment, ordering that Petitioner take nothing on its claims. (C.R. 1164–1165). Petitioner appealed these rulings. (C.R. 1168).

On July 23, 2019, the Fourteenth Court of Appeals issued a written opinion affirming the Trial Court’s judgment. Petitioner filed a Motion for En Banc Reconsideration on August 6, 2019, which the Fourteenth Court of Appeals denied on September 12, 2019. Petitioner has now filed its Petition for Review in this Court.

## **ISSUES PRESENTED**

1. Whether property owned by two Delaware limited liability companies based in Boca Raton, Florida is exempt as “public property” under Tex. Const. art. VIII § 2, Tex. Tax Code § 11.11 and Tex. Educ. Code § 12.128, because the property is subleased with state funds received by a public charter school, when the public charter school did not hold legal or equitable title to the property.
2. Whether the Fourteenth Court of Appeals erred in its interpretation of Tex. Educ. Code § 12.128 in the context of the facts presented in this case.



## **STATEMENT OF FACTS**

### **A. The Property**

The property made the basis of this lawsuit consists of 2.4866 acres of land in the City of Galveston, Galveston County, Texas, and is located near the southeast corner of the intersection of 61st Street and Stewart Road in Galveston. (See C.R. 283 -286 and 290-293). Hereafter, this property is referred to as “the Property”.

### **B. Ownership of the Property**

As of October 1976, the Property was owned by Barnsafe—O.K. Associates, Incorporated. On October 1, 1976, Barnsafe—O.K. Associates, Inc. leased the Property to Safeway Stores, Inc. (C.R. 67-67). The landlord’s interest in the Property was subsequently acquired by two Florida Trusts – the Aneff Trust and the Alisan Trust – which owned the property in joint, undivided interests. (C.R. 74-84). The two Trusts acquired the property subject to Safeway’s lease.

In September 2012, Susan Sandelman, as Successor Trustee of the Aneff Trust, conveyed that Trust’s undivided interest in the Property to Aneff, LLC. (C.R. 280-286). At that same time Ms. Sandelman, as Trustee of the Alisan Trust, conveyed that Trust’s interest in the Property to Alisan, LLC. (C.R. 287-293). Both Aneff, LLC and Alisan, LLC are Delaware Limited Liability Companies based in Boca Raton, Florida, and continue to own the property.

### **C. The Property is Leased and then Sub-Leased**

As noted above, Safeway Stores, Inc. leased the Property in October 1976. Safeway subsequently assigned its Tenant's interest in the lease to HEB Grocery Company, L.P. ("HEB").<sup>1</sup>

On July 31, 2009, HEB subleased the Property, along with other adjoining property, to Appellant (the "Sublease"). (C.R. 194-264). The Sublease expires on October 31, 2026. (C.R. 200). Petitioner had no right to purchase any of the leased premises. (C.R. 196). Under its terms, Appellant pays HEB \$16,710.42 per month in rent. (C.R. 256). Petitioner understood that the Property was taxable, and agreed to pay ad valorem taxes assessed against the Property as additional rent. (C.R. 201).

### **D. The Adjoining Property**

The Sublease originally included additional adjoining property, referred to therein as the "Ainbinder Lease" property. (C.R. 194). HEB subsequently acquired fee title to the Ainbinder Lease property, and then sold it to Petitioner. (C.R. 255). Since Petitioner owns that adjoining property, Respondent granted Petitioner's

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<sup>1</sup> See C.R. at pp. 88 and 128-129 ["Existing HEB Lease" and legal description thereof]. See also C.R. 194 [The two Trusts are identified as "Kin Properties," and the lease to Safeway/HEB is identified as the "Kin Properties Lease." That Lease was apparently amended two times, in 2004 and in 2007.] *Id.*

application to exempt that property as “public property,” pursuant to Tex. Tax. Code §11.11.

### **E. Exemption Application, Lawsuit and Appeal**

Petitioner filed an application with Respondent seeking to exempt the Property as “public property” For the 2009 tax year, and all subsequent years.<sup>2</sup> Respondent denied Petitioner’s application to exempt the Property, and Petitioner exhausted its administrative remedies by protesting to the Appraisal Review Board. The Appraisal Review Board denied the protest, and Petitioner appealed to District Court. (C.R. 5 – 13). Respondent filed its Motion for Summary Judgment on January 5, 2018. (C.R. 54 – 309). Petitioner filed its Motion for Summary Judgment on February 15, 2018. (C.R. 353 – 1160).

The Trial Court denied Petitioner’s claims for relief under Chapter 42 of the Texas Tax Code and its parallel request for declaratory relief, entering judgment that Appellant take nothing on those claims. (C.R. 1164 – 1166). In three separate Orders, the Trial Court: (1) denied Petitioner’s Cross-Motion for Summary Judgment on its claims, (2) granted Respondent’s first Motion for Summary Judgment on Petitioner’s claims for declaratory relief, based on the exclusive remedies provided in the Tax Code per Tax Code §42.09, and (3) entered

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<sup>2</sup> See Court of Appeals Opinion, 585 S.W.3d at 532-33.

Judgment that Petitioner take nothing on its remaining claims. (*See* C.R. 164 – 166). Petitioner appealed the Judgment. (C.R. 1168).

On appeal, the Fourteenth Court of Appeals affirmed the judgment of the Trial Court on the basis that the Property was not owned by the State or a political subdivision of the State, and was therefore not entitled to an exemption from ad valorem taxation as “public property.” Petitioner has now filed its Petition for Review seeking for this Court to reverse the Fourteenth Court of Appeals – again claiming that this privately-owned property should be exempt as public property solely because it is leased to a governmental entity – in this case a public charter school.

## **SUMMARY OF THE ARGUMENT**

The Fourteenth Court of Appeals did not err in affirming the Trial Court's Judgment. Tex. Const. art. VIII §2 and Tex. Tax Code § 11.11 require that property be publicly owned in order to be exempt from ad valorem taxation.

Exemptions from ad valorem taxation must be expressly provided for in the Texas Constitution. The Texas Constitution does not exempt privately owned property that is leased (or more specifically in this case, subleased) to a public charter school.

Purported exemptions from ad valorem taxation are strictly construed, because they depart from the constitutional requirement that ad valorem taxes be equal and uniform. Here, Tex. Educ. Code §12.128(a-1)<sup>3</sup> provides that the leasehold estate created when a public charter school leases (or subleases) property from another party is "property of the State for all purposes." This statute does not operate to divest the fee owner of title to the leased property, and does not exempt the owner's fee interest from ad valorem taxation.

Finally, Petitioner's and Amicus' concerns about the Fourteenth Court of Appeals' "narrow interpretation" of Tex. Educ. Code § 12.128 is misplaced. The Court of Appeals did not state, or even hint, that a public charter school holding

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<sup>3</sup>Tex. Educ. Code §12.128(a-1) was formerly part of §12.128(a) prior to amendments made in 2019. *See* Senate Bill 1454 (2019), attached as Tab 1 in Respondent's Appendix.

legal or equitable title to real property would not be entitled to exempt that property from ad valorem taxation. This red herring is simply a feeble attempt to induce this Court to accept review on a case involving a clear application of narrow, well-established legal principles.<sup>4</sup>

For these reasons Petitioner's Petition for Review should be denied.

### **ARGUMENT AND AUTHORITIES**

#### **A. Petitioner Does Not Own the Property. Therefore, the Property is not Exempt from Ad Valorem Taxation as "Public Property."**

The Texas Constitution provides that all real property is subject to taxation unless exempt. Tex. Const. art. VIII, § 1(b). Article VIII, § 2 vests in the legislature authority to create and enumerate exemptions pertaining to public property used for public purposes. *Id.* art VII, § 2 (providing that "the legislature may, by general laws, exempt from taxation public property used for public purposes").

However, ad valorem tax exemptions are disfavored and are strictly construed against the taxpayer and in favor of the taxing authority, because they undermine the constitutional requirement that ad valorem taxes be equal and uniform. *Brazos Elec. Power Coop., Inc., v. Tex. Comm'n on Env'tl. Quality*, 576

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<sup>4</sup>Amicus also raises a potential claim, for the first time, that the Property might be exempt under Tex. Const. art. XI § 9. This was not raised by Petition in its application for exemption, its pleadings in the trial court, or in the appeal below. Therefore, asserting such a claim now is clearly improper. Moreover, as Amicus candidly notes, *no* Texas appellate court has ever applied art. XI § 9 to privately owned property.

S.W.3d 374, 383 (Tex. 2019); *N. Alamo Water Supply Corp. v. Willacy Cty. Appraisal Dist.*, 804 S.W.2d 894, 899 (Tex. 1991). As the claimant, the burden of proof of demonstrating that the Property is exempt lies with Petitioner. *Id.* The exemption Petitioner sought in this lawsuit must affirmatively appear in the statute, and all doubts about whether the exemption applies are resolved in favor of Respondent. *Id.* See also *Bullock v. Nat'l Bancshares Corp.*, 584 S.W.2d 268, 272 (Tex. 1979).

In this case, Petitioner seeks to exempt the Property as “public property” under Tex. Tax Code § 11.11. This section provides two requirements for obtaining an ad valorem exemption for public property. In order to obtain the exemption, the property must be (1) “owned by this state or a political subdivision,” and (2) “used for public purposes.” Tex. Tax Code §11.11(a). This requirement is based on Article VIII, section 2 of the Texas Constitution, which does not permit the exemption of privately owned property as “public property.” *DeGuerin v. Washington County App. Dist.*, No. 01-11-00548-CV, 2012 Tex. App. LEXIS 3031 (Tex. App.—Houston [1st Dist.] 2012, no pet.).<sup>5</sup>

Texas courts have defined “ownership” for purposes of taxation as referring to the person or entity who holds legal or equitable title. See *Childress County v.*

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<sup>5</sup> This principle is nothing new. See Op. Atty. Gen. No. GM-2904 (1940)(private property leased to the City of Corpus Christi for water reservoir purposes not exempt from ad valorem taxation); Op. Atty. Gen. No. GM-1621(1939)(private property leased to the Federal Works Progress Administration not exempt from ad valorem taxation).

*State*, 92 S.W.2d 1011, 1015 (Tex. 1936) (person who has legal title is the “owner” for taxation purposes); *TRQ Captain's Landing L.P. v. Galveston Cent. Appraisal Dist.*, 212 S.W.3d 726, 732 (Tex. App.—Houston [1st Dist.] 2006) (explaining that legal and equitable title holders may claim tax exemption), *aff'd*, 423 S.W.3d 374 (Tex. 2014); *Comerica Acceptance Corp. v. Dallas Cent. Appraisal Dist.*, 52 S.W.3d 495, 497–98 (Tex. App.—Dallas 2001, pet. denied) (common meaning of “owner” in Tax Code is person or entity holding legal title or equitable right to obtain legal title to property). “Equitable title is defined as the present right to compel legal title.” *Travis Cent. Appraisal Dist. v. Signature Flight Support Corp.*, 140 S.W.3d 833, 840 (Tex. App.—Austin 2004, no pet.); *see also AHF-Arbors at Huntsville L LLC v. Walker Cty. Appraisal Dist.*, 410 S.W.3d 831, 837 (Tex. 2012). Thus, “even when a public entity does not possess legal title to property, if it holds equitable title and the property is used for public purposes, the property is exempt from taxation.” 2016 Tex. Op. Att’y Gen. KP-0066.

Petitioner claims that Tex. Educ. Code §12.128(a-1) changes all this, in stating (in part) that property leased to a public charter school is “public property for all purposes.”<sup>6</sup> Clearly, this provision applies to the *leasehold estate* held by a

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<sup>6</sup> This subsection also provides that property leased to a public charter school is held in trust by the charter holder for the benefit of the students of the open-enrollment charter school, and may be used only for purposes for which a school district may use such property. Thus, for example, a copy machine leased by a charter school may not be used by the spouse of a teacher to make copies of advertisements for the spouse’s restaurant business.



public charter school.<sup>7</sup> Petitioner, however, interprets them to apply to the *entire fee estate* of the leased property. Under this interpretation a lease from a private owner to a public charter school is actually a deed – or is alternatively a taking without compensation, since the *entire fee estate* automatically becomes “public property for all purposes.” The statute’s language provides no basis for this extreme conclusion, and Petitioner’s interpretation fails under the strict construction requirements set out above. Finally, Petitioner cites no constitutional authorization for this extreme result – most likely because none exists.

**B. The Fourteenth Court of Appeals did not erroneously interpret Tex. Educ. Code § 12.128.**

The Court of Appeals limited its decision to the facts of this case:

No argument of state ownership can rest on legal or equitable title here. It is undisputed that the Property is privately owned, and that the private owners possess legal title. Odyssey signed a sublease agreement knowing the property was privately owned, and Odyssey agreed to pay all ad valorem taxes assessed on the privately-owned Property. Additionally, though equitable title may support a public entity's claim for a tax exemption, Odyssey does not argue that the State or a political subdivision has a claim of equitable title to the Property. Nothing in the summary-judgment record shows any basis for equitable title. [585 S.W.3d at 535 (footnote with citations omitted).]

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<sup>7</sup> The 2019 amendments to § 12.128 clarify and confirm this point. New subsection (c-1) requires the sale, liquidation or transfer of property *owned* by a public charter school that ceases to operate, while the state *may* direct the charter school to “assign the charter holder’s interest in the lease to the [state] agency.” Tex. Educ. Code 12.128(c-1). Under Petitioner’s analysis of §12.128(a) and (a-1), the latter provision would be rendered nugatory, since the property is already “public property for all purposes.”

Section 12.128 does not speak to tax exemptions as to leased real property during the period a charter remains active. It does not establish that this State or a political subdivision owns the Property for Tax Code section 11.11 tax-exemption purposes, and Odyssey's interest in the Property is limited to its leasehold. Education Code section 12.128 does not vest in Odyssey a right to claim a tax exemption on the State's behalf. In fact, the section does not mention taxes or exemptions at all... [585 S.W.3d at 536.]

To the extent Education Code section 12.128(a) applies in the present context before a school charter has been revoked, we can say that this section does not mean that the Property Odyssey has leased is "owned by this state" as that phrase is contemplated under Tax Code section 11.11. Odyssey cites no authority holding otherwise. [*Id.*]

Petitioner asserts that the Court of Appeals' holding "precluded Tex. Educ. Code §12.128 from having any impact upon other ownership interests, such as where a charter school might hold legal or even equitable title under a lease agreement with a purchase option."<sup>8</sup> This is a red herring, and it is false. If a public charter school holds legal or equitable title to property and uses it for public purposes, the property will be exempt as "public property" under Tex. Tax Code § 11.11 – irrespective of Tex. Educ. Code § 12.128. Contrary to what Petitioner asserts, nothing in the Court of Appeals' opinion "forecloses the ability of a charter school to assert the School's or the state's equitable title..."<sup>9</sup> The Court of Appeals' holding was limited to the facts of this case, and simply do not apply to cases in which a public charter school hold legal or equitable title. The language

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<sup>8</sup> *Petition for Review* at pp. 17-18.

<sup>9</sup> *Id.* at p. 18.

used in the Court of Appeals' opinion cannot, by its own terms, apply in such cases.

### **CONCLUSION AND PRAYER**

This is a relatively simple case. The statute Petitioner relies on does not provide the exemption it seeks. Petitioner's feeble attempts to interpret the statute's plain language to infer an exemption fail under the strict construction standard that applied in this case. The Property is privately owned by two Delaware LLCs based in Boca Raton, Florida. The owners leased the Property to a grocer, who then subleased the property to a public charter school. This property is not entitled to an exemption as "public property." The Court of Appeals opinion addresses the narrow issues raised in this case. There are no unique or novel legal issues presented here. Respondent GCAD therefore requests that Petitioner's Petition for Review be denied in all respects.

Respectfully submitted,

McLEOD, ALEXANDER, POWEL  
& APFFEL, P.C.

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**ATTORNEYS FOR RESPONDENT,  
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DISTRICT**

**CERTIFICATE OF SERVICE**

I hereby certify that on this, the 10<sup>th</sup> day of March, 2020, I emailed a copy of the foregoing document, and also electronically filed with the Clerk of Court using the e-filing manager, which will send notification of such filing to counsel of record for Appellant in this proceeding as follows: Mr. Joseph E. Hoffer, Mr. Robert A. Schulman, and Ms. Denise Nance Pierce, and Mr. John J. Joyce, Schulman, Lopez, Hoffer & Adelstein, LLC, 845 Proton Road, San Antonio, Texas 78258, Email: [jhoffer@slh-law.com](mailto:jhoffer@slh-law.com), [rschulman@slh-law.com](mailto:rschulman@slh-law.com), [dpierce@slh-law.com](mailto:dpierce@slh-law.com) and [jjoyce@slh-law.com](mailto:jjoyce@slh-law.com).

/s/ Anthony P. Brown  
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## **CERTIFICATE OF COMPLIANCE**

Pursuant to Texas Rule of Appellate Procedure 9.4(i), I hereby certify that this Petition for Review contains 2,529 words (excluding the caption, identity of parties and counsel, table of contents, index of authorities, statement of the case, statement of issues presented, signature, certificate of service, certificate of compliance, and appendix).

I further certify that this is a computer-generated document created in Word for Mac, using 14-point typeface for all text, except for footnotes, which are in 12-point typeface. In making this certificate of compliance I am relying on the word count provided by the software used to prepare this document.

I understand that a copy of this document may be posted on the Court's website and that the electronically filed copy of the document becomes part of the Court's record.

Copies have been sent to all parties associated with this case.

/s/ *Anthony P. Brown*

Anthony P. Brown  
Attorney for Respondent

## **APPENDIX**

1. Senate Bill 1454 (2019).

## [Tex. Educ. Code § 12.128](#)

This document is current through the 2019 Regular Session, 86th Legislature, and 2019 election results.

***Texas Statutes & Codes Annotated by LexisNexis® > Education Code > Title 2 Public Education (Subts. A — I) > Subtitle C Local Organization and Governance (Chs. 11 — 20) > Chapter 12 Charters (Subchs. A — E) > Subchapter D Open-Enrollment Charter School (§§ 12.101 — 12.150)***

### **Sec. 12.128. Property Purchased or Leased with State Funds.**

**(a)** Property purchased with funds received by a charter holder under Section 12.106 after September 1, 2001:

- (1)** is considered to be public property for all purposes under state law;
- (2)** is property of this state held in trust by the charter holder for the benefit of the students of the open-enrollment charter school; and
- (3)** may be used only for a purpose for which a school district may use school district property.

**(a-1)** Property leased with funds received by a charter holder under Section 12.106 after September 1, 2001:

- (1)** is considered to be public property for all purposes under state law;
- (2)** is property of this state held in trust by the charter holder for the benefit of the students of the open-enrollment charter school; and
- (3)** may be used only for a purpose for which a school district may use school district property.

**(b)** If at least 50 percent of the funds used by a charter holder to purchase real property are funds received under Section 12.106 before September 1, 2001, the property is considered to be public property to the extent it was purchased with those funds.

**(b-1)** Subject to Subsection (b-2), while an open-enrollment charter school is in operation, the charter holder holds title to any property described by Subsection (a) or (b) and may exercise complete control over the property as permitted under the law.

**(b-2)** A charter holder may not transfer, sell, or otherwise dispose of any property described by this section without the prior written consent of the agency if:

- (1)** the charter holder has received notice of:
  - (A)** the expiration of the charter holder's charter under Section 12.1141 and the charter has not been renewed; or
  - (B)** the charter's revocation under Section 12.115(c);
- (2)** the charter holder has received notice that the open-enrollment charter school is under discretionary review by the commissioner, which may result in the revocation of the charter or a reconstitution of the governing body of the charter holder under Section 12.115; or
- (3)** the open-enrollment charter school for which the charter is held has otherwise ceased to operate.

**(c)** The commissioner shall:

## Tex. Educ. Code § 12.128

- (1) take possession and assume control of the property described by Subsection (a) of an open-enrollment charter school that ceases to operate; and
  - (2) supervise the disposition of the property in accordance with this subchapter.
- (c-1)** Notwithstanding Subsection (c), if an open-enrollment charter school ceases to operate, the agency:
- (1) for property purchased with state funds, shall direct the charter holder to dispose of the property through one of the following methods:
    - (A) retain or liquidate the property and provide reimbursement to the state as provided by Section 12.1281;
    - (B) transfer the property to:
      - (i) the agency under Section 12.1281(h); or
      - (ii) a school district or open-enrollment charter school under Section 12.1282;
    - (C) close the operations of the open-enrollment charter school under Section 12.1284; or
    - (D) take any combination of the actions described by Paragraphs (A), (B), and (C); and
  - (2) for property leased with state funds, may direct the charter holder to assign the charter holder's interest in the lease to the agency.
- (c-2)** The agency may approve an expenditure of remaining funds by a former charter holder for insurance or utilities for or maintenance, repairs, or improvements to property described by this section if the agency determines that the expenditure is reasonably necessary to dispose of the property or preserve the property's value.
- (d) The commissioner may adopt rules necessary to administer this section.
  - (e) This section does not affect a security interest in or lien on property established by a creditor in compliance with law if the security interest or lien arose in connection with the sale or lease of the property to the charter holder.
  - (f) A decision by the agency under this section is final and may not be appealed.

## History

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Enacted by [Acts 2001, 77th Leg., ch. 1504](#) (H.B. 6 ), § 18, effective September 1, 2001; am. Acts 2013, 83rd Leg., ch. 1140 (S.B. 2), § [37](#), effective September 1, 2013; am. [Acts 2019, 86th Leg., ch. 631 \(S.B. 1454\), § 7](#), effective June 10, 2019.

Annotations

## LexisNexis® Notes

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## Notes

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### STATUTORY NOTES

Effect of amendments.



**2013 amendment**, added “property of this state” in (a)(2).

The 2019 amendment deleted “or leased” following “purchased” in the introductory paragraph of (a); added (a-1), (b-1), and (b-2); substituted “with this subchapter” for “with law” at the end of (c)(2); and added (c-1), (c-2), and (f).

## Case Notes

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**Education Law: Administration & Operation: Charter Schools**

**Education Law: Administration & Operation: Property**

**Education Law: Administration & Operation: Property: Contracts**

**Education Law: Funding**

**Governments: State & Territorial Governments: Property**

**Tax Law: State & Local Taxes: Real Property Tax: Exemptions**

### **Education Law: Administration & Operation: Charter Schools**

District court properly sustained a plea to the jurisdiction filed by the Texas Education Agency (TEA) and the Commissioner of Education and dismissed the case because after a charter school’s charter was revoked, TEA was entitled to assume the school’s entire ownership interest in its three properties inasmuch as the disputed statutory provisions allowed the State to take possession of charter school property purchased with state funds received after September 1, 2001, the statutory term “purchase” included mortgage payments, as the State provided funds to charter schools to be used exclusively for a public purpose, and TEA was acting in its capacity as a party to the charter agreement, not as a sovereign exercising its power of eminent domain. [\*Transformative Learning Sys. v. Tex. Educ. Agency\*, 572 S.W.3d 281, 2018 Tex. App. LEXIS 10863 \(Tex. App. Austin Dec. 28, 2018, no pet.\)](#).

Academy failed to raise a fact question as to whether commissioner exceeded his authority over the Foundation School Program funds because the Texas Education Code granted the commissioner the authority to refuse to allow the academy to use the funds to pay its debts; academy’s pleadings conclusively established that the commissioner did not act ultra vires. [\*Premier Learning Acad., Inc. v. Tex. Educ. Agency\*, 521 S.W.3d 439, 2017 Tex. App. LEXIS 5202 \(Tex. App. Austin June 8, 2017, no pet.\)](#).

Court lacked subject-matter jurisdiction and erred in denying the agency’s plea to the jurisdiction because none of the school’s claims waived the agency’s sovereign immunity since [\*Tex. Educ. Code Ann. § 12.128\*](#) was constitutional and any takings claim was not yet ripe; since the State provided funds to charter schools to be used exclusively for a public purpose, there was nothing unconstitutional about its taking possession of property that the charter school purchased with those funds. [\*Tex. Educ. Agency v. Acad. of Careers & Techs., Inc.\*, 499 S.W.3d 130, 2016 Tex. App. LEXIS 7404 \(Tex. App. Austin July 13, 2016, no pet.\)](#).

### **Education Law: Administration & Operation: Property**

Court lacked subject-matter jurisdiction and erred in denying the agency’s plea to the jurisdiction because none of the school’s claims waived the agency’s sovereign immunity since [\*Tex. Educ. Code Ann. § 12.128\*](#) was constitutional and any takings claim was not yet ripe; since the State provided funds to charter schools to be used exclusively for a public purpose, there was nothing unconstitutional about its taking possession of property that the charter school

purchased with those funds. [Tex. Educ. Agency v. Acad. of Careers & Techs., Inc., 499 S.W.3d 130, 2016 Tex. App. LEXIS 7404 \(Tex. App. Austin July 13, 2016, no pet.\)](#).

### **Education Law: Administration & Operation: Property: Contracts**

District court properly sustained a plea to the jurisdiction filed by the Texas Education Agency (TEA) and the Commissioner of Education and dismissed the case because after a charter school's charter was revoked, TEA was entitled to assume the school's entire ownership interest in its three properties inasmuch as the disputed statutory provisions allowed the State to take possession of charter school property purchased with state funds received after September 1, 2001, the statutory term "purchase" included mortgage payments, as the State provided funds to charter schools to be used exclusively for a public purpose, and TEA was acting in its capacity as a party to the charter agreement, not as a sovereign exercising its power of eminent domain. [Transformative Learning Sys. v. Tex. Educ. Agency, 572 S.W.3d 281, 2018 Tex. App. LEXIS 10863 \(Tex. App. Austin Dec. 28, 2018, no pet.\)](#).

### **Education Law: Funding**

Academy failed to raise a fact question as to whether commissioner exceeded his authority over the Foundation School Program funds because the Texas Education Code granted the commissioner the authority to refuse to allow the academy to use the funds to pay its debts; academy's pleadings conclusively established that the commissioner did not act ultra vires. [Premier Learning Acad., Inc. v. Tex. Educ. Agency, 521 S.W.3d 439, 2017 Tex. App. LEXIS 5202 \(Tex. App. Austin June 8, 2017, no pet.\)](#).

### **Governments: State & Territorial Governments: Property**

Charter school was not entitled to an exemption from property taxes on real property it leased for school purposes because [Tex. Tax Code Ann. § 11.11\(a\)](#) required that the property be publicly owned by the State or a political subdivision and the school subleased from a private owner, and the statute did not vest the school with any right to an exemption or purport to confer title in leased property to the school just because it leased the property for a public purpose using State funds. [Odyssey 2020 Acad., Inc. v. Galveston Cent. Appraisal Dist., No. 14-18-00358-CV, 2019 Tex. App. LEXIS 6259 \(Tex. App. Houston 14th Dist. July 23, 2019\)](#).

### **Tax Law: State & Local Taxes: Real Property Tax: Exemptions**

Charter school was not entitled to an exemption from property taxes on real property it leased for school purposes because [Tex. Tax Code Ann. § 11.11\(a\)](#) required that the property be publicly owned by the State or a political subdivision and the school subleased from a private owner, and the statute did not vest the school with any right to an exemption or purport to confer title in leased property to the school just because it leased the property for a public purpose using State funds. [Odyssey 2020 Acad., Inc. v. Galveston Cent. Appraisal Dist., No. 14-18-00358-CV, 2019 Tex. App. LEXIS 6259 \(Tex. App. Houston 14th Dist. July 23, 2019\)](#).

## **Opinion Notes**

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### **Attorney General Opinions**

#### **Disposition of Property.**

Tex. Nat. Res. Code Ann. ch. 31 does not authorize the General Land Office ("GLO") to unilaterally direct the disposition of public property returned to the State pursuant to [Tex. Educ. Code Ann. § 12.128](#), but it provides for

## Tex. Educ. Code § 12.128

GLO involvement in the Commissioner of Education's disposition of such property. 2016 Tex. Op. Att'y Gen. KP-0097.

**Public Property.**

[Tex. Educ. Code Ann. § 12.128\(c\)](#) provides that the Commissioner of Education shall take possession and assume control of, and supervise the disposition of, public property of an open-enrollment charter school that ceases to operate; in this provision, the Legislature has set aside this returned public property such that it is not unappropriated property for the Permanent School Fund under [Tex. Educ. Code Ann. § 43.001\(a\)\(2\)](#). 2016 Tex. Op. Att'y Gen. KP-0097.

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