

No. \_\_\_\_\_

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**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, Cause No. 14-18-00358-CV**

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**ODYSSEY 2020 ACADEMY, INC.'S  
PETITION FOR REVIEW**

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## **STATEMENT OF THE CASE**

### ***Nature of the Case:***

Odyssey, a subordinate unit of government and public open-enrollment charter school, brought a Petition for Review upon GCAD's and GCAD's Appraisal Review Board's denial of a tax exemption under TEX. TAX CODE § 11.11 and TEX. EDUC. CODE § 12.128 for property leased by Odyssey. In its Petition, Odyssey sought reversal of GCAD and GCAD's Appraisal Review Board's denial of the requested exemption.

### ***Name of Trial Judge, Designation and County of Trial Court, and Disposition in the Trial Court:***

On April 9, 2019, the Honorable Patricia Grady, Presiding Judge in the 212th Judicial District Court, Galveston County, denied Odyssey's Motion for Summary Judgment. On April 26, 2019, Judge Grady granted GCAD's Motion for Summary Judgment, and ordered that Odyssey take nothing on its claims. *See* Tab 1, Trial Court Order. Odyssey appealed. CR at p. 1168 (v1).<sup>1</sup>

### ***Parties and District of the Court of Appeals.***

The parties in the Fourteenth Court of Appeals were Odyssey and GCAD.

### ***Citation to the Court of Appeals' Opinion and Justices Participating in the Opinion:***

*Odyssey 2020 Acad., Inc. v. Galveston Cent. Appraisal Dist.*, 14-18-00358-CV, 2019 WL 3294991 (Tex. App.—Houston [14th Dist.] July 23, 2019, no pet. h.). Opinion written by Chief Justice Kem Thompson Frost and joined by Justices Kevin Jewell and Francis Bourliot.

### ***Parties and Disposition in the Court of Appeals:***

On July 23, 2019, the Fourteenth Court of Appeals issued a written opinion, overruled Odyssey's issues, and affirmed the trial court's judgment. Tab 3. Odyssey filed a Motion for *En Banc* Reconsideration on August 6, 2019. The Court of Appeals denied the motion on September 12, 2019. No other motions are currently pending before the Court of Appeals.

<sup>1</sup> References to the Clerk's record will be made by referencing CR, the page number, and volume. References to the Appendix will be made by tab number. For example, "Tab 3" references Appendix Tab 3.



## **STATEMENT OF JURISDICTION**

This Court has jurisdiction pursuant to Section 22.001(a) of the Government Code because this appeal presents a question of law that is important to the jurisprudence of the state, and should be decided by this Court. *See* TEX. GOV'T CODE § 22.001(a); *see also* TEX. R. APP. P. 56.1(a)(6).

Additionally, this Court should exercise its discretion to grant review because this appeal involves the construction and validity of a statute; and because the Fourteenth Court of Appeals' interpretation of TEX. EDUC. CODE § 12.128 constitutes an error of law of such importance to the state's jurisprudence that it should be corrected; and as this is an important question of state law that impacts charter public schools statewide and that should be, but has not been, resolved by the Supreme Court. *See* TEX. R. APP. P. 56.1(a)(3)-(6).

## **ISSUES PRESENTED**

1. Whether property purchased or leased with state funds received by a public charter school under Sections 12.106 and 12.128 of the Texas Education Code constitutes public property sufficient to meet the public ownership requirement of Section 11.11(a) of the Texas Tax Code.
2. Whether the Fourteenth Court of Appeals erred in failing to apply the plain language of Section 12.128 of the Texas Education Code.

3. Whether the Fourteenth Court of Appeals erred by so narrowly construing Education Code Section 12.128 to apply only in the context of charter revocations without regard for different factual scenarios under which Section 12.128 would plainly apply.

No. \_\_\_\_\_

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**IN THE SUPREME COURT OF TEXAS**

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TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF TEXAS:

Petitioner Odyssey 2020 Academy, Inc. (d/b/a Odyssey Academy, Inc.) (herein “Odyssey”) respectfully requests that this Court grant its Petition for Review and reverse the Fourteenth Court of Appeals’ decision with instructions to render judgment in Odyssey’s favor.

## **STATEMENT OF FACTS**

The State of Texas authorized Odyssey to operate public open-enrollment charter schools and provide a public education to children in Galveston County and surrounding school districts. *See* CR at p. 7 ¶ 12 (v1); CR at pp. 764-765 (v2). Odyssey’s main campus is partially on property not owned by Odyssey, but is subject to a long-term lease (2009-2026) from private owners (“subject property”). *See* CR at p. 55 (v1); CR at pp. 764-765 ¶¶ 4-8 (v2).

Odyssey requested that GCAD designate the subject property as exempt from *ad valorem* taxes. *See* CR at pp. 7-8 ¶¶ 14-15 (v1). This was based on the plain language and application of two Texas statutes: (1) Section 12.128(a) of the Texas Education Code, because that section provides that the leased subject property is “public property for all purposes under state law” and “is property of this state,”<sup>2</sup> and (2) Section 11.11 of the Tax Code, which provides that “property owned by this state or a political subdivision of this state is exempt from taxation if the property is used for public purposes.” *See* CR at pp. 7-8 ¶¶ 14-15 (v1).

At all stages of this litigation, it has been undisputed that:

1. Odyssey has continuously leased and operated the subject property since July 31, 2009;

<sup>2</sup> Section 12.128 was recently amended and leased property was moved to a newly created subsection 12.128(a-1), which contains the same language as former 12.128(a); all citations to section 12.128(a) herein refer to the previous statute in effect at the time of this dispute.

2. All lease payments have been made with state funds received under Section 12.106 of the Texas Education Code;
3. Odyssey uses the subject property exclusively as a public school.
4. The leased property is used only for purposes for which a school district may use district property and Odyssey has exclusive use and control; and
5. The portions of the school campus owned by Odyssey are exempt as public property. CR at pp. 8-9 ¶ 17, p. 14 (v1); CR at p. 54 (v1) (GCAD MSJ: “Odyssey owns some of the property on which its school is located. *That property is exempted from ad valorem taxation as public property, and is not in dispute.*”).

GCAD denied Odyssey’s exemption request. Odyssey exhausted its administrative remedies and timely filed its petition for review in the Galveston County District Court. CR at p. 9 ¶¶ 18-19, p. 5 (v1). Both parties filed motions for summary judgment, and the Trial Court entered judgment in GCAD’s favor. *See* CR at pp. 1164, 1166 (v2).

Odyssey appealed. CR at p. 1168 (v2). While the Fourteenth Court correctly stated the nature of the case, its opinion erroneously concluded that Section 12.128 did not operate to qualify it for an exemption under Section 11.11 of the Texas Tax Code. Tab 3 at 4.

## **SUMMARY OF THE ARGUMENT**

The plain language of Section 12.128 compels a finding that Odyssey's interest in the property is for and on behalf of the state and is public property "for all purposes under state law." "[A]ll purposes" necessarily includes ad valorem tax purposes. The Fourteenth Court erred in three material aspects. First, the Court misplaced its reliance on *Texas Turnpike Company v. Dallas County*, 153 Tex. 474 (Tex.1954), and misapplied rationale from that opinion to Chapter 12 of the Education Code. Second, the Court of Appeals ignored the plain language of Texas Education Code Section 12.128. Third, but perhaps most importantly, the Court's erroneous interpretation of Section 12.128 will likely preclude tax exemption where public charter schools (and the state) hold either legal or equitable title to real property. For these important reasons, all related to the proper use of public funds, property, and the taxation thereof, Odyssey respectfully requests that this Court reverse the Court of Appeals and instruct the lower court to enter judgment for Odyssey.

## **ARGUMENT**

- 1. Public ownership for purposes of property tax exemption is met by the Texas Education Code's statutory framework applicable to public charter schools.**

Texas Education Code Section 12.128 is clear: Property purchased or leased by a charter school with state funds is considered public property, and “property of this state” held in trust by the charter holder for the benefit of public school children. TEX. EDUC. CODE 12.128(a). The Court of Appeals erroneously held that Odyssey’s charter property is not public and should be subject to *ad valorem* tax. In doing so, the Court of Appeals held that Section 12.128(a) is meaningless, and that state property for the use and education of public school children should be taxed as private property. Pursuant to TEX. R. APP. P. 56.1(a)(5)-(6), this Court should correct this error of law and resolve the important question of whether tax exempt status exists for charter school property held under Section 12.128.

The Court of Appeals discounted Section 12.128’s clear and direct language, straining to rely instead on *Texas Turnpike Company v. Dallas County*, 153 Tex. 474 (Tex.1954) in determining that “public ownership cannot be legislatively declared.” Tab. 3 at \*4. “Public ownership, for tax-exemption purposes, must grow out of the facts; it is a legal status, based on facts, that may not be created or conferred by mere legislative, or even contractual, declaration. If the state does not in fact own the taxable title to the property, **neither the Legislature by statute, nor the [parties],**

**may make the state the owner thereof by simply saying that it is the owner.”**

Tab. 3 at \*4 (emphasis in original).

However, the circumstances in *Turnpike* are not even remotely analogous to the instant case. In *Turnpike*, the petitioners were created as private corporations for the purpose of building, acquiring, owning, operating and maintaining toll roads within Texas. *Turnpike*, 153 Tex. at 401. In 1953, the legislature enacted Article 6674v and the Texas Turnpike Authority, which allowed for roads constructed by private toll road corporations, such as the petitioners, to be transferred to the state upon completion of certain conditions. Among the conditions were that the roads meet certain standards and be free of indebtedness. *Id.* at 477. Deeds were held in escrow until such time as those conditions were fulfilled. The State could not accept the toll road property until those conditions were met. Article 6674v, Sec. 18 (1953)(repealed 1995). Article 6674v also declared that the property for which deeds were held in escrow “shall be vested at all times in the State of Texas and shall constitute public property used for public purposes ... .” *Id.*

The petitioners contracted with the Turnpike Authority, executed escrow agreements, and placed deeds in escrow for the property. The petitioners then claimed a tax exemption for that property as being publicly owned and being used for a public purpose under Article XI Section 9 of the Texas Constitution. The petitioners argued that Article 6674v, when considered with their by-laws and



escrow agreements, had the effect of placing taxable title in the state, making the property exempt.

Article 6674v recognized continued private ownership of the property, subject to completion of the conditions in Sec. 18. *Id.* By placing conditions on the delivery of the deeds, Article 6674v acknowledged that deeds might never be delivered. Contrary to that acknowledgment, the Legislature simultaneously declared that property conveyed by those deeds were public property. By doing so, Article 6674v purported to create a situation that reflected the exact opposite of reality. This Court recognized that, no matter the language of the statute, the actual ownership remained in the private corporation; the State was not yet the owner until the conditions were fulfilled by the private corporations and deeds were delivered.

Accordingly, the *Turnpike* Court found that the property was not “publicly owned” as constitutionally required. The Court found that under those facts, the State only had a *contingent* interest, because the delivery of deeds was based upon fulfilment of conditions outside of its control, *e.g.*, the elimination of all debt by the private corporation. *Turnpike*, 153 Tex. at 478.

In contrast to *Turnpike* where the Legislature made a counterfactual declaration of ownership, in Chapter 12 of the Education Code the Legislature’s declaration that charter school property is property of this state for all purposes under state law is wholly based in actual and present fact. Here, Odyssey’s charter school

is publicly funded under Chapter 12 of the Education Code, with the Legislature conditioning the school's receipt of state funding on the property remaining public. *See, e.g.*, TEX. EDUC. CODE §§ 12.1071 (by accepting public funds, “charter holder agrees to accept all liability under this subchapter”); 12.128 (charter property purchased or leased with state funds is public property; state takes possession of charter property purchased with state funds upon charter school ceasing operation.). This is not the Legislature declaring a falsehood, but rather mandating that funds disseminated to charter schools, and the property purchased or leased therewith, retain their public character. The funds do not lose the quality of public property when the funds leave the state coffers. *Transformative Learning Sys. V. Texas Educ. Agency*, 572 S.W.3d 281, 293 (Tex. App.—Austin 2018, no pet.) (legal framework of Education Code Chapter 12 Subchapter D implicates the rights and obligations of recipients of state funding); *Honors Acad., Inc. v. Texas Educ. Agency*, 555 S.W.3d 54, 63 (Tex. 2018), reh’g denied (Sept. 28, 2018) (“the Legislature has [not] ... created vested private-property rights in the creation of the charter school system”).

Public charter schools stem from the Legislature; their powers, authority, status, and the right to even exist all emanate from legislative command. *LTTTS Charter Sch., Inc. v. C2 Constr., Inc.*, 342 S.W.3d 73, 81 (Tex.2011). An all-encompassing legislative regime “called charter schools into existence” and “defines their role in our public education system.” *Id.* at 81-82. Because State dollars form

the source of charter school funding, the State is able to designate the character of its own funds and of items purchased or leased with its funds through legislation. *Id.* at 80 (holding that “[U]se of state-funded property and state funds is also carefully circumscribed.”), *citing* TEX. EDUC. CODE Ch. 12. By legislative mandate, funds received by a charter school are conditioned upon the state’s continued interest in the funds, and the property purchased or leased with those funds. Accordingly, the funds or property held by the charter school retain their public character.

“This legislative scheme indicates that an open-enrollment charter is a new and innovative form of public schooling rather than a mere contract to outsource public education to a private entity.” *Honors*, 555 S.W 3d at 63. The “Education Code does not treat the charter holder or school like a private citizen; they exist as a part of the public school system.” *Id.* at 64, *citing* TEX. EDUC. CODE §12.105.

If a charter school’s property were truly private property, as were the toll roads in *Turnpike*, the Legislature could not provide for the State taking the property upon the charter school ceasing operation, as that would certainly constitute a taking of private property by the State. To the contrary, Courts have found that no taking occurs when the State takes control over charter school property pursuant to Education Code Section 12.128(c). *See Transformative Learning*, 572 S.W.3d at 292 (also finding a charter school listing property as belonging to the State consistent with the statutory framework); *see also Texas Educ. Agency v. Acad. of Careers &*

*Techs., Inc.*, 499 S.W.3d 130, 136 (Tex. App.—Austin 2016, no pet.) (because the state provides the funds to be used for a public purpose, the state can take property purchased with those funds; “what the Legislature giveth, the Legislature may taketh away” (internal citation omitted)).

Further, unlike *Turnpike*, the statutory framework for charter schools dictates that the State does not have a mere contingent interest in charter school property. Quite the opposite, this Court has held found that “the Legislature has [not] ... created vested private-property rights in the creation of the charter school system.” *Honors*, 555 S.W.3d at 63. To this end, any State dollar given to a charter school remains public property – it is simply held in trust by the charter holder for State’s and public’s benefit. *See* TEX. EDUC. CODE §12.107(a)(2) (state funds received by a charter holder are held in trust by the charter holder for the benefit of the students of the charter school); TEX. EDUC. CODE §12.128(a)(2) (Property purchased or leased with public funds “is property of this state held in trust...”).

In *Honors*, this Court stated that “... open-enrollment charter schools are expressly considered “governmental entit[ies] for ... [statutes] relating to property held in trust[.]” *Honors*, 555 S.W.3d at 64. As with the creation of any valid trust, the beneficiaries become the owners of the equitable or beneficial title to the trust property, and are considered the real owners, and the trustee is only the depository of the bare legal title. *See, e.g. City of Mesquite v. Malouf*, 553 S.W.2d 639, 644

(Tex. Civ. App.—Texarkana 1977, writ ref'd n.r.e.) (finding that when a valid trust is created, the beneficiaries become the owner of the equitable title to the property, and are considered the real owners).

In short, the facts in *Turnpike* are not analogous, and the reasoning is therefore inapplicable. Under Chapter 12 of the Education Code, public ownership was not created or conferred on private property by declaration; it was retained to dispel the notion that public funds became private upon receipt by a charter holder. From the time the funds were in the state coffers to the time the state retakes possession when the charter school ceases operation, the property remains public. Whether taking the form of cash assets in the school's depository or of personal or real property, it is still "property of this state" and "public property for all purposes under state law." TEX. EDUC. CODE §§ 12.107(a) and 12.128(a). This Court and the Legislature have made clear that charter schools bear the burdens and responsibilities of being entrusted with publicly owned property, which can be taken without implicating private property rights. TEX. EDUC. CODE § 12.128(a), (c); *LTTs, Transformative Learning, supra*.

In contrast with these statutes and precedent concerning charter school property, the Court of Appeals found that property "of this State" which is "public property **for all purposes under state law**," "held in trust" by the charter holder is

not publicly-owned property for tax exemption purposes. These two positions cannot be reconciled, and must be squared by this Court.

**2. The Court erred by not following the plain language of Section 12.128**

If the language of a statute is not vague or ambiguous, Courts are bound to follow the letter and intent of the statute without utilizing extrinsic aids and rules of statutory construction.<sup>3</sup> *Archer v. F.D.I.C.*, 831 S.W.2d 483, 484–85 (Tex. App.—Houston [14th Dist.] 1992, no writ) (recognizing although following the plain language of the statute created a harsh result, carving out exceptions is not permissible). A court’s focus when construing a statute is the intent of the Legislature. *City of LaPorte v. Barfield*, 898 S.W.2d 288, 292 (Tex.1995). It is a fair assumption that the Legislature tries to say what it means, and therefore the words it chooses should be the surest guide to legislative intent. *Owens & Minor, Inc. v. Ansell Healthcare Products, Inc.*, 251 S.W.3d 481, 483 (Tex. 2008).

To give effect to the Legislature’s intent, we rely on “the plain and common meaning of the statute’s words.” *Owens & Minor, citing Liberty Mut. Ins. Co. v. Garrison Contractors, Inc.*, 966 S.W.2d 482, 484 (Tex.1998). When a statute is clear and unambiguous, courts need not resort to rules of construction or extrinsic aids to construe it, but should give the statute its common meaning. *Cail v. Service Motors*

<sup>3</sup> As this case involves questions of statutory construction, granting review is proper. TEX. R. APP. P. 56.1(a)(3).

*Inc.*, 660 S.W.2d 814, 815 (Tex.1983). Moreover, courts must take statutes as they find them. *See RepublicBank Dallas, N.A. v. Interkal, Inc.*, 691 S.W.2d 605, 607 (Tex.1985). Courts must not engage in forced or strained construction; instead, they must yield to the plain sense of the words the Legislature chose. *Saade v. Villarreal*, 280 S.W.3d 511, 518 (Tex. App.—Houston [14th Dist.] 2009, pet. dismiss'd), *citing St. Luke's Episcopal Hosp. v. Agbor*, 952 S.W.2d 503, 505 (Tex.1997).

In *Saade*, the Court interpreted clauses within a subsection to determine whether a supported medical school was a state agency (1) only for purposes of Chapter 104 of the Civil Practice and Remedies Code and for determining the liability of an employee, or (2) for all purposes. *Saade*, 280 S.W.3d at 519-520. In finding that the supported medical school was a state agency only for the limited purposes in the subsection, the Court acknowledged that using the term “for all purposes” in the statute would have “far reaching effects”:

Dropping in a provision that supported medical schools (and certain other medical entities) are state agencies **for all purposes—a mandate that could have far reaching effects**—in the middle of this section otherwise dealing only with individual liability makes no sense. Further still, had the legislature intended to say in section 312.007 that such entities were state agencies for all purposes, **it would have been more logical to put such an important pronouncement in its own separately lettered subsection**, or at a minimum, to put it in a separate sentence within subsection (a), **most helpfully with an indication that the pronouncement was for all purposes and not just for the purposes enunciated in section 312.007.**

*Id.* at 520 (emphasis added).

Notably, when writing Section § 12.128, the Legislature “most helpfully” created 12.128 subsections (a)(1) and (a)(2) “in [their] own separately lettered subsection[s]” which, as called for by the *Saade* court, make explicit that the property in question is “property of this state for all purposes under state law.” *Id.*; TEX. EDUC. CODE § 12.128. The Court of Appeals ignored the Legislature’s plain language and intentional structure, and narrowed the Legislature’s broad intent to judicially create an unwritten exception for property tax exemptions.

In discarding the plain language of Section 12.128, the Court of Appeals reasoned that the statute generally “comes into play when a school charter is revoked” and that “the section does not mention taxes or exemptions at all.” App. 3 at 4. As an initial matter, the precedent construing Section 12.128 has focused narrowly on the time period when a charter is revoked because, until now, that is where controversies have arisen. The fact that this is the first known appellate controversy over interpretation of Section 12.128(a) regarding tax matters should not have caused the Court of Appeals to ignore the section’s plain language, nor does it obviate the requirement to give the entire statute meaning. *Levinson Alcoser Associates, L.P. v. El Pistolon II, Ltd.*, 513 S.W.3d 487, 493 (Tex.2017), reh’g denied (Apr. 21, 2017) (Courts interpret each word, phrase, and clause in a manner that gives meaning to them all). Section 12.128(a)’s language does not in any way



limit its application only to charter revocations. If anything indicates Section 12.128's scope, it is the broad and all-encompassing language that charter property is public property "for all purposes under state law," not merely when the school ceases operation. Section 12.128(a)(3) further indicates the present and continuous character of this property as public when it restricts use to "only for a purpose for which a school district may use school district property." The Court of Appeals' attempt to limit Section 12.128's application is therefore without foundation and is not compatible with the plain language of the statute.

Second, Section 12.128 certainly does cover taxes and exemptions. Taxes, exemptions, and all other subject matter state law could contemplate are encompassed by the use of "all purposes under state law." No speculation is required as to which purposes the legislature intended when it wrote the words "all purposes." The word "all" is inclusive and must include the Tax Code. The legislature did not say "all purposes except as applied to Chapter 11 of the Tax Code," or "all purposes except for exemption of taxation." The Legislature purposefully chose the words "all purposes" to describe the purposes for which publicly-funded charter school property was to be considered and treated as public property. *See, e.g., Laidlaw Waste Sys. (Dallas), Inc. v. City of Wilmer*, 904 S.W.2d 656, 659 (Tex.1995) (Every word of a statute must be presumed to have been used purposefully, and every word excluded from a statute must also be presumed to be excluded purposefully). This

Court must presume the plain meaning of the word “all” to mean “all,” including the Tax Code. *See Owens & Minor*, 966 S.W.2d at 484; *Cail*, 660 S.W.2d at 815; *Saade*, 280 S.W.3d at 518.<sup>4</sup> Because charter school property purchased or leased with State funds is “public property for all purposes under state law,” the Court of Appeals cannot rewrite the statute’s plain language and create exclusions *ex nihilo*.

Further, the Court did not discuss the provisions of Section 12.128(a)(2), which should have considered when deciding how to construe Section 12.128.<sup>5</sup> Section 12.128(a)(2) discusses the trustee relationship between the charter school and the public property. Property purchased or leased with public funds “is **property of this state** held in trust by the charter holder for the benefit of the students of the open-enrollment charter school.” TEX. EDUC. CODE. 12.128(a)(2) (emphasis added). As with the creation of a valid trust, the beneficiaries become the owners of the equitable or beneficial title to the trust property, and are considered the real owners, and the trustee is only the depository of the bare legal title. *See, e.g., City of Mesquite*, 553 S.W.2d at 644.

The effect of Section 12.128 plain language reading is clear: charter school property is public property “of this state.” There cannot be a clearer expression of

<sup>4</sup> Even if the word “all” were ambiguous, agency definitions supports Odyssey’s position. *See* 19 TEX. ADMIN. CODE §100.1063 (reiterating that charter property is public property, and misuse of such property is subject to Texas law governing same).

<sup>5</sup> It is presumed that the entire statute is intended to be effective. TEX. GOV’T CODE § 311.021.

an intent to demonstrate public ownership by the state “for all purposes under state law.” By this clear language, charter school property meets the strictures of Tax Code Section 11.11(a)’s public ownership requirement, and should be exempt from taxation. Under the Court of Appeals’ interpretation of the law, the legislature’s intent was to allow GCAD to tax the funding of a public school. Funds received under Section §12.106 will necessarily be used to pay property taxes. In taxing these properties, the Court of Appeals did not preserve tax payments to this State, but has instead required the State to tax its own revenue. In its interpretation of Section 12.128 and Tax Code Section 11.11, the Court of Appeals disregarded the economic realities of requiring a public school to pay taxes to other subordinate units of government. This is not permissible. *See Combs v. Roark Amusement & Vending L.P.*, 422 S.W.3d 632, 637 (Tex. 2013) (“We believe that in the area of tax law, like other areas of economic regulation, a plain-meaning determination should not disregard the economic realities underlying the transactions in in issue.”)

**3. The Court’s narrow interpretation of Section 12.128 precludes any application to the Tax Code.**

The Fourteenth Court found that Odyssey’s leasehold interest did not confer the requisite legal or equitable title sufficient to implicate the “ownership” requirement for exemption under TEX. TAX CODE § 11.11. Tab 3 at \*4. However, in doing so, the Court’s 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.

In its discussion of Odyssey’s argument, the Court stated that Odyssey’s reliance on Section 12.128 was misplaced, reasoning that Section 12.128 “does not speak to tax exemptions as to leased real property during the period a charter remains active,” and “[i]n fact, the section does not mention taxes or exemptions at all.” *Id.*, at \*4 (internal citations omitted). However, GCAD tacitly conceded that Section 12.128 *would* create a public property interest sufficient to implicate the Section 11.11 exemption if there was an ownership interest beyond a leasehold:

Applying the plain meaning of Tex. Tax Code § 11.11 and Tex. Educ. Code § 12.128, the “property of this state held in trust” in section 12.128(a) refers to Appellant’s leasehold interest in the subject property. Clearly, that leasehold estate in the property is “public property,” and must be used exclusive [sic] for school purposes.

*See* Response Brief at 9. Despite this admission, the Court categorically denied that Section 12.128(a) gives charter schools any rights to a tax exemption, despite the Section’s plain language (“public property for all purposes under state law,” “property of this state held in trust”). Such a denial is without justification in the language of the statute or precedent.

The Court’s language also forecloses the ability of charter schools to assert the School’s or State’s equitable title, or charter schools that have lease arrangements (lease with purchase option) that *do* grant them equitable title under the current state

of the law<sup>6</sup> from claiming any right to relief under Section 12.128. App. 3 at 4 (“Education Code section 12.128 does not vest in Odyssey a right to claim a tax exemption on the State’s behalf...”). While Odyssey’s property is tax-exempt *via* its leasehold interest and the plain language of Section 12.128, a situation where a charter school has either legal or equitable title is even clearer, and such property is certainly exempt under TEX. TAX CODE § 11.11 through the charter holder or the State’s equitable ownership under Section 12.128.

In light of the legislature’s important pronouncement<sup>7</sup> that charter property purchased with public funds is public property “for all purposes under state law,” and “property of this state held in trust” by the charter holder, the Court of Appeals’ erroneous statements that Section 12.128 has no application to taxes or exemptions “at all” has far-reaching implications for charter schools that have either legal or equitable title that must be rectified in order to not disturb their existing *ad valorem* tax exemptions already recognized across the state.

### **PRAYER**

Odyssey prays that this Court grant its Petition for Review, reverse the opinion of the Court of Appeals with instructions to render judgment in Odyssey’s favor.

<sup>6</sup> See, e.g., *Texas Dept. of Corrections v. Anderson County Appraisal Dist.*, 834 S.W.2d 130, 131 (Tex.App.—Tyler, 1992, writ denied) (TDOC held equitable title and was exempt under Section 11.11).

<sup>7</sup> *Saade*, 280 S.W.3d at 520.

Respectfully submitted,

**SCHULMAN, LOPEZ,  
HOFFER & ADELSTEIN, LLP**

*/s/ Joseph E. Hoffer* \_\_\_\_\_

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**ATTORNEYS FOR PETITIONER**

**CERTIFICATE OF SERVICE**

I hereby certify that on October 25, 2019, a true and correct copy of the foregoing has been delivered by electronic service to counsel of record for Respondent in this proceeding as follows: Mr. Anthony P. Brown, McLeod, Alexander, Powel & Apffel, PC, 803 Rosenberg, P. O. Box 629, Galveston, Texas 77553, Email: [apbrown@mapalaw.com](mailto:apbrown@mapalaw.com).

*/s/ Joseph E. Hoffer* \_\_\_\_\_  
Attorney for Petitioner

## **CERTIFICATE OF COMPLIANCE**

Pursuant to Texas Rule of Appellate Procedure 9.4(i), I hereby certify that this Petition for Review contains 4494 words (excluding the caption, identity of parties and counsel, table of contents, index of authorities, statement of the case, statement of jurisdiction, 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/ Joseph E. Hoffer* \_\_\_\_\_

Attorney for Petitioner



## **APPENDIX**

Tab 1: Trial Court Order Denying Odyssey's Motion for Summary Judgment (April 9, 2018)

Tab 2: Trial Court Final Summary Judgment (April 26, 2018)

Tab 3: Fourteenth Court of Appeals Opinion

Tab 4: Fourteenth Court of Appeals Judgment

Tab 5: Tex. Educ. Code § 12.128

Tab 6: Tex. Tax. Code § 11.11

Tab 7: Tex. Educ. Code § 12.105

Tab 8: Tex. Educ. Code § 12.106

Tab 9: Tex. Educ. Code § 12.1071



Cause No. 17CV 1133

2018 APR 10 AM 10:52

ODYSSEY 2020 ACADEMY, INC.

vs.

GALVESTON CENTRAL  
APPRAISAL DISTRICT

§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT OF  
GALVESTON COUNTY, TEXAS  
212<sup>TH</sup> JUDICIAL DISTRICT COURT

*[Signature]*  
DISTRICT CLERK  
GALVESTON COUNTY, TEXAS

**ORDER DENYING  
PLAINTIFF ODYSSEY 2020 ACADEMY, INC.'S  
MOTION FOR SUMMARY JUDGMENT**

On this day, the Court considered Plaintiff Odyssey 2020 Academy, Inc.'s Motion for Summary Judgment. Having considered the Motion, Defendant Galveston Central Appraisal District's Response, the evidence, and the argument of counsel, if any, the Court concludes the Motion should be DENIED.

It is therefore ORDERED, ADJUDGED and DECREED that Plaintiff Odyssey 2020 Academy, Inc.'s Motion for Summary Judgment is hereby DENIED.

Signed this 9 day of April, 2018.

*[Signature]*  
JUDGE PRESIDING



**Cause No. 17CV 1133**

**2018 APR 26 PM 2:49**

**ODYSSEY 2020 ACADEMY, INC.**

**vs.**

**GALVESTON CENTRAL  
APPRAISAL DISTRICT**

§ IN THE DISTRICT COURT OF  
§  
§ GALVESTON COUNTY, TEXAS  
§  
§  
§ 212<sup>TH</sup> JUDICIAL DISTRICT COURT

*[Signature]*  
TEXAS DISTRICT CLERK  
GALVESTON COUNTY, TEXAS

**FINAL SUMMARY JUDGMENT**

On this day, the Court considered Defendant Galveston Central Appraisal District's Motion for Summary Judgment. Having considered the Motion, Plaintiff Odyssey 2020 Academy, Inc.'s Response, the summary judgment evidence, and the argument of counsel, if any, the Court concludes the Motion is meritorious and should be GRANTED.

It is therefore ORDERED, ADJUDGED and DECREED that Plaintiff Odyssey 2020 Academy, Inc. TAKE NOTHING on its claims against Defendant Galveston Central Appraisal District. All taxable costs incurred in this suit are taxed against Plaintiff Odyssey 2020, Inc., for which let execution issue.

This Final Summary Judgment is intended to be a final judgment disposing of all claims and causes of action asserted in this suit. All relief requested in this suit and not expressly granted in this Judgment is in all things DENIED.

Signed this 26 day of April, 2018.

*[Signature]*  
JUDGE PRESIDING

**Affirmed and Opinion filed July 23, 2019.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-18-00358-CV**

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**ODYSSEY 2020 ACADEMY, INC., Appellant**

**V.**

**GALVESTON CENTRAL APPRAISAL DISTRICT, Appellee**

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**On Appeal from the 212th District Court  
Galveston County, Texas  
Trial Court Cause No. 17-CV-1133**

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**O P I N I O N**

Odyssey 2020 Academy, Inc., an open-enrollment charter school, appeals from a summary judgment denying it an ad valorem tax exemption. Odyssey contends the trial court erred in granting summary judgment in favor of appellee Galveston Central Appraisal District and in denying Odyssey declaratory relief. For the claimed exemption to apply, the property at issue, at a minimum, must be owned by the State of Texas or a political subdivision of the State. Because we conclude the property is not so owned, we affirm the trial court's judgment.

## Background

Odyssey is an open-enrollment charter school that is part of the Texas public school system.<sup>1</sup> Odyssey's campus at issue is located on real property in Galveston County. Odyssey subleases the relevant part of the property from a private entity, HEB Grocery Company, LP ("HEB"), which leases it from another private entity or entities.<sup>2</sup> Under the sublease agreement between Odyssey and HEB, Odyssey is obligated to pay and remain current on ad valorem taxes assessed on the Property.

In December 2016, Odyssey notified the Galveston Central Appraisal District (the "District") that it claimed the Property was exempt from ad valorem taxes under Texas Tax Code section 11.11. That section, entitled "Public Property," provides that "property owned by this state or a political subdivision of this state is exempt from taxation if the property is used for public purposes." *See* Tex. Tax Code § 11.11(a). Odyssey asserts, and the District agrees, that Odyssey has used the Property exclusively as a public school. As to whether the Property is owned by the State or one of its political subdivisions, Odyssey directed the District to Education Code section 12.128(a), which provides:

(a) Property purchased or leased with funds received by a charter holder . . . :

(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

<sup>1</sup> *See* Tex. Educ. Code § 12.105 ("An open-enrollment charter school is part of the public school system of this state.").

<sup>2</sup> We refer to the subleased premises as the "Property." The Property is owned by two Delaware limited liability companies based in Florida. Odyssey owns other property in Galveston County but that property is not in dispute.

(3) may be used only for a purpose for which a school district may use school district property.

Tex. Educ. Code § 12.128(a).

According to Odyssey, Education Code section 12.128 supports its request for a tax exemption because (1) Odyssey receives its funding from the State of Texas through the Foundation School Program<sup>3</sup> and (2) uses that state funding to make payments under the sublease. Thus, Odyssey argued to the District that the Property, being leased with state funds, is considered to be “public property for all purposes under state law.” *See id.* Consequently, Odyssey contended the Property is “owned by this state” and is exempt from taxation under Tax Code section 11.11. Odyssey did not assert that it is a State agency itself or a political subdivision of the State for tax purposes.

Based on the above rationale, Odyssey asserted exempt status for the Property beginning on July 31, 2009,<sup>4</sup> and continuing for “all subsequent and future tax years until such time as the Property ceases to be eligible for tax-exempt status.” Odyssey also sought a refund of all personal and real property taxes paid on the Property for the 2013-2015 tax years.

The District denied Odyssey’s exemption request, and Odyssey protested to the District’s Administrative Review Board (the “Board”). Odyssey presented evidence to the Board that: (1) Odyssey has leased or occupied all or part of the Property since July 31, 2009; (2) Odyssey made all lease payments for the Property with funds received under Education Code section 12.106; and (3) Odyssey uses the

<sup>3</sup> *See* Tex. Educ. Code § 12.106. According to Odyssey, the Foundation School Program is one of the primary state revenue sources for all public schools in Texas, including school districts and open-enrollment charter schools. *See* Tex. Educ. Code §§ 42.001 *et seq.*

<sup>4</sup> Odyssey signed the sublease agreement with HEB on July 31, 2009.

Property exclusively as a public school for purposes for which a school district may use school district property. The Board denied Odyssey's protest, and Odyssey appealed to the district court seeking judicial review of the Board's decision as well as declaratory relief.

In the trial court, the parties filed competing motions for summary judgment. After an oral hearing, the trial court signed a final summary judgment in the District's favor, ordering that Odyssey take nothing. Odyssey appeals.

### **Analysis**

In two issues, Odyssey asserts that the trial court erred by granting the District's motion for summary judgment and denying Odyssey's motion for summary judgment.

We review a trial court's ruling on a motion for summary judgment de novo. *Tarr v. Timberwood Park Owners Assoc., Inc.*, 556 S.W.3d 274, 278 (Tex. 2018). To prevail on a traditional motion for summary judgment, the movant must show that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. Tex. R. Civ. P. 166a(c). When both parties move for summary judgment on the same issues and the trial court grants one motion and denies the other, we consider the summary judgment evidence presented by both sides, determine all questions presented, and render the judgment the trial court should have rendered. *Tarr*, 556 S.W.3d at 278.

The Texas Constitution provides that all real property is subject to taxation unless exempt. Tex. Const. art. VIII, § 1(b). Article VIII, section 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”).

Though the legislature is authorized to exempt certain property from taxation, the law does not favor tax exemptions, and courts are not to construe them favorably. *N. Alamo Water Supply Corp. v. Willacy Cty. Appraisal Dist.*, 804 S.W.2d 894, 899 (Tex. 1991); *Am. Hous. Found. v. Harris Cty. Appraisal Dist.*, 283 S.W.3d 76, 80 (Tex. App.—Houston [14th Dist.] 2009, no pet.). Statutory taxation exemptions are subject to strict construction because they undermine equality and uniformity by imposing a greater burden on some taxpaying businesses and individuals rather than spreading the burden on all taxpayers equally. *See Brazos Elec. Power Coop., Inc., v. Tex. Comm’n on Env’tl. Quality*, No. 17-1003, —S.W.3d—, 2019 WL 1966835, at \*6 (Tex. May 3, 2019); *N. Alamo Water Supply*, 804 S.W.2d at 899; *Am. Hous. Found.*, 283 S.W.3d at 80. Accordingly, the claimant seeking an exemption bears a heavy burden of proof to clearly show that the claimant falls within the statutory exception. *See N. Alamo Water Supply*, 804 S.W.2d at 899; *Am. Hous. Found.*, 283 S.W.3d at 80. All doubts are resolved against the granting of an exemption. *Brazos Electric*, 2019 WL 1966835, at \*6.

The claimed exemption at issue is contained in Tax Code subsection 11.11(a). According to that subsection, to be exempt from taxation a property must be (1) “owned by this state or a political subdivision of this state” and (2) “used for public purposes.” Tex. Tax Code § 11.11(a). Odyssey contends that both requirements are met, and the District disputes only the first one. Odyssey says the exemption applies because lease payments are made with state funding and therefore the Property is deemed “public property for all purposes” pursuant to Education Code section 12.128(a)(1). Tex. Educ. Code § 12.128(a)(1).



Odyssey’s argument is untenable for several reasons. For the exemption to apply, Tax Code section 11.11 requires property used for public purposes to be *publicly owned* by this State or a political subdivision of this State. Texas courts generally have defined “ownership” for taxation purposes in terms of the person or entity holding legal or equitable title. *See Childress County v. 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). Moreover, whether property is publicly owned for tax-exemption purposes must be based on facts—not legislative declaration—establishing that the State or one of its political subdivisions has legal or equitable title. “Public ownership, for tax-exemption purposes, must grow out of the facts; it is a legal status, based on facts, that may not be created or conferred by mere legislative, or even contractual, declaration. If the state does not in fact own the taxable title to the property, *neither the Legislature by statute, nor the [parties], may make the state the owner thereof by simply saying that it is the owner.*” *Tex. Turnpike Co. v. Dallas County*, 271 S.W.2d 400, 402 (Tex. 1954) (emphasis added); *see also Leander Indep. Sch. Dist. v. Cedar Park Water Supply Corp.*, 479 S.W.2d 908, 912 (Tex. 1972).<sup>5</sup>

<sup>5</sup> “In this instance the Legislature is authorized to exempt ‘public property used for public purposes.’ It is essential then that the property be used for public purposes but that in itself is not enough. The property must, wholly apart from its use, be ‘public property.’ In our opinion this means public ownership, and the Texas courts have never held to the contrary. We accordingly

The most factually relevant decisions come from the Third Court of Appeals, which twice addressed situations involving a land lease between private and public entities. Both times, the court concluded that the exemption turned on whether the State or a political subdivision held legal or equitable title to the property, and title was determined based on the facts. *See Travis Cent. Appraisal Dist. v. Signature Flight Support Corp.*, 140 S.W.3d 833, 840 (Tex. App.—Austin 2004, no pet.); *Hays Cty. Appraisal Dist. v. Sw. Tex. State Univ.*, 973 S.W.2d 419, 422 (Tex. App.—Austin 1998, no pet.).

In *Signature Flight Support*, the City of Austin leased undeveloped land at the Austin-Bergstrom International Airport to private entities. *See* 140 S.W.3d at 836. The lease provided that the private entities would construct aircraft hangars and offices on the unimproved land, but once the City accepted the improvements it would hold legal title to them, and the City's title in the improvements would fully vest upon the lease term's completion. *Id.* at 836, 840. The appraisal district denied an exemption for the improvements, contending they were owned by the entities who built them. *Id.* at 836-37. The Third Court of Appeals held that the City had accepted the improvements and therefore possessed title, making the property tax-exempt because it was publicly owned. *Id.* at 840.

*Southwest Texas State University* is even more aligned with the facts in today's case. There, a private, nonprofit corporation—the Southwest Texas State University Support Foundation—purchased property and leased it to the University. *See* 973 S.W.2d at 420. The lease required the University to pay property taxes. *Id.* The University sought an exemption, which the appraisal district denied. *Id.* at 420-21. The Third Court of Appeals agreed with the appraisal district: although the

now hold that the clause in question authorizes the Legislature to exempt only publicly owned property used for public purposes.” *Leander Indep. Sch. Dist.*, 479 S.W.2d at 912.

Foundation asserted it intended to transfer title to the University after the last mortgage payment, nothing in the record showed that the University held legal or equitable title as of the time it requested the exemption. *Id.* at 422. Thus, taxable ownership lay with the Foundation as the holder of legal title, and the property was not subject to an exemption. *Id.* (“As long as the University’s interest in the property is contingent, taxable ownership is in the Foundation rather than the University.”).

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,<sup>6</sup> 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.

Moreover, we believe Odyssey’s reliance on Education Code section 12.128 is misplaced. Few cases have construed section 12.128, but generally it comes into play when a school charter is revoked. *See Transformative Learning Sys. v. Tex. Educ. Agency*, 572 S.W.3d 281, 287, 290 (Tex. App.—Austin 2018, no pet.); *Tex. Educ. Agency v. Academy of Careers & Techs., Inc.*, 499 S.W.3d 130, 135-37 (Tex. App.—Austin 2016, no pet.) (upholding constitutionality of section 12.128). Upon revocation of a charter, section 12.128 requires the seizure of charter school property “purchased or leased with funds received by a charter holder under Section 12.106

<sup>6</sup> *See Signature Flight Support Corp.*, 140 S.W.3d at 840 (“Recent appellate cases suggest that a person holding ‘equitable title’ to property may be the owner for taxation purposes; equitable title is defined as the present right to compel legal title.”); Tex. Att’y Gen. Op. No. KP-0066 (2016) (“Property is exempt under Tax Code section 11.11 if a public entity holds legal or equitable title to the property and the property is used for public purposes. An owner who has the present right to compel legal title holds equitable title.”).

after September 1, 2001.” *Transformative Learning*, 572 S.W.3d at 287 (discussing section 12.128).<sup>7</sup> 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. The legislature could have created the tax exemption Odyssey seeks by specifically expressing it within Tax Code section 11.11, Education Code section 12.128, or elsewhere, but the legislature has not done so. Further, Education Code section 12.128 does not change the above facts regarding legal and equitable title. To the extent Odyssey contends as much, section 12.128(a) does not purport to confer legal or equitable title in leased property to a charter school that leases the property from a private entity and uses it for public purposes, even though the charter school makes lease payments from funds received from the State. *See Tex. Turnpike Co.*, 271 S.W.2d at 402 (public ownership may not be conferred by legislative declaration).

In attempting to establish entitlement to a tax exemption, Odyssey bears a heavy burden of proof and must show that it clearly falls within a statutory exception, which we construe strictly. *See N. Alamo Water Supply*, 804 S.W.2d at 899; *Am. Hous. Found.*, 283 S.W.3d at 80. We conclude Odyssey has not met this burden. As the purported exemption here either is unestablished or in significant doubt, we are compelled to resolve that doubt against the granting of the exemption. *See Brazos Electric*, 2019 WL 1966835, at \*6. Tax exemptions must be clearly

<sup>7</sup> The issue in *Transformative Learning* was whether the school had “purchased” the property in question. *See* 572 S.W.3d at 287. The case did not involve leased property.

enumerated, and the exemption Odyssey seeks is not. 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.

For these reasons, we conclude the Property is not owned by this State or a political subdivision of this State, and therefore Odyssey is not entitled to the claimed tax exemption. *See* Tex. Tax Code § 11.11(a). The trial court did not err in granting summary judgment in the District’s favor.

For similar reasons, and because such a claim is redundant, the trial court did not err in denying Odyssey’s claim for declaratory relief. As Odyssey acknowledges, a declaratory-judgment action that merely mirrors a claim for statutory relief is redundant and should be dismissed. Odyssey stated in its summary-judgment motion, “It is undisputed that it is appropriate to dismiss a declaratory judgment action that only seeks redundant remedies—i.e., seeking review of an agency’s order in the manner prescribed by statute, as well as by declaratory judgment. *See, e.g., Local Neon Co., Inc. v. Strayhorn*, No. 03-04-00261-CV, 2005 WL 1412171, at \*7 (Tex. App.—Austin June 16, 2005, no pet.)”

Accordingly, we overrule both of Odyssey’s issues.

### **Conclusion**

We affirm the trial court’s judgment.

/s/ Kevin Jewell  
Justice

Panel consists of Chief Justice Frost and Justices Jewell and Bourliot.

July 23, 2019



## JUDGMENT

### **The Fourteenth Court of Appeals**

ODYSSEY 2020 ACADEMY, INC., Appellant

NO. 14-18-00358-CV

V.

GALVESTON CENTRAL APPRAISAL DISTRICT, Appellee

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This cause, an appeal from the judgment in favor of appellee, Galveston Central Appraisal District, signed April 26, 2018, was heard on the appellate record. We have inspected the record and find no error in the judgment. We order the judgment of the court below **AFFIRMED**.

We order appellant, Odyssey 2020 Academy, Inc., to pay all costs incurred in this appeal.

We further order this decision certified below for observance.

Judgment Rendered July 23, 2019.

Panel Consists of Chief Justice Frost and Justices Jewell and Bourliot. Opinion delivered by Justice Jewell.

Vernon's Texas Statutes and Codes Annotated  
Education Code (Refs & Annos)  
Title 2. Public Education (Refs & Annos)  
Subtitle C. Local Organization and Governance  
Chapter 12. Charters (Refs & Annos)  
Subchapter D. Open-Enrollment Charter School

V.T.C.A., Education Code § 12.128

§ 12.128. Property Purchased or Leased with State Funds

Effective: June 10, 2019

[Currentness](#)

(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:

(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.

#### **Credits**

Added by Acts 2001, 77th Leg., ch. 1504, § 18, eff. Sept. 1, 2001. Amended by Acts 2013, 83rd Leg., ch. 1140 (S.B. 2), § 37, eff. Sept. 1, 2013; Acts 2019, 86th Leg., ch. 631 (S.B. 1454), § 7, eff. June 10, 2019.

#### [Notes of Decisions \(13\)](#)

V. T. C. A., Education Code § 12.128, TX EDUC § 12.128

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Chapter 11. Taxable Property and Exemptions (Refs & Annos)  
Subchapter B. Exemptions (Refs & Annos)

V.T.C.A., Tax Code § 11.11

§ 11.11. Public Property

Effective: June 17, 2011

[Currentness](#)

(a) Except as provided by Subsections (b) and (c) of this section, property owned by this state or a political subdivision of this state is exempt from taxation if the property is used for public purposes.

(b) Land owned by the Permanent University Fund is taxable for county purposes. Any notice required by [Section 25.19](#) of this code shall be sent to the comptroller, and the comptroller shall appear in behalf of the state in any protest or appeal relating to taxation of Permanent University Fund land.

(c) Agricultural or grazing land owned by a county for the benefit of public schools under [Article VII, Section 6, of the Texas Constitution](#) is taxable for all purposes. The county shall pay the taxes on the land from the revenue derived from the land. If revenue from the land is insufficient to pay the taxes, the county shall pay the balance from the county general fund.

(d) Property owned by the state that is not used for public purposes is taxable. Property owned by a state agency or institution is not used for public purposes if the property is rented or leased for compensation to a private business enterprise to be used by it for a purpose not related to the performance of the duties and functions of the state agency or institution or used to provide private residential housing for compensation to members of the public other than students and employees of the state agency or institution owning the property, unless the residential use is secondary to its use by an educational institution primarily for instructional purposes. Any notice required by [Section 25.19](#) of this code shall be sent to the agency or institution that owns the property, and it shall appear in behalf of the state in any protest or appeal related to taxation of the property.

(e) Property that is held or dedicated for the support, maintenance, or benefit of an institution of higher education as defined by [Section 61.003, Education Code](#), but is not rented or leased for compensation to a private business enterprise to be used by it for a purpose not related to the performance of the duties and functions of the state or institution or is not rented or leased to provide private residential housing to members of the public other than students and employees of the state or institution is not taxable. If a portion of property of an institution of higher education is used for public purposes and a portion is not used for those purposes, the portion of the property used for public purposes is exempt under this subsection. All oil, gas, and other mineral interests owned by an institution of higher education are exempt from all ad valorem taxes. Property bequeathed to an institution is exempt from the assessment of ad valorem taxes from the date of the decedent's death, unless:

(1) the property is leased for compensation to a private business enterprise as provided in this subsection; or

(2) the transfer of the property to an institution is contested in a probate court, in which case ad valorem taxes shall be assessed to the estate of the decedent until the final determination of the disposition of the property is made. The property is exempt from the assessment of ad valorem taxes upon vesting of the property in the institution.

(f) Property of a higher education development foundation or an alumni association that is located on land owned by the state for the support, maintenance, or benefit of an institution of higher education as defined in Chapter 61, Education Code, is exempt from taxation if:

(1) the foundation or organization meets the requirements of [Sections 11.18\(e\)](#) and [\(f\)](#) and is organized exclusively to operate programs or perform other activities for the benefit of institutions of higher education; and

(2) the property is used exclusively in those programs or activities.

(g) For purposes of this section, an improvement is owned by the state and is used for public purposes if it is:

(1) located on land owned by the Texas Department of Criminal Justice;

(2) leased and used by the department; and

(3) subject to a lease-purchase agreement providing that legal title to the improvement passes to the department at the end of the lease period.

(h) For purposes of this section, tangible personal property is owned by this state or a political subdivision of this state if it is subject to a lease-purchase agreement providing that the state or political subdivision, as applicable, is entitled to compel delivery of the legal title to the property to the state or political subdivision, as applicable, at the end of the lease term. The property ceases to be owned by the state or political subdivision, as applicable, if, not later than the 30th day after the date the lease terminates, the state or political subdivision, as applicable, does not exercise its right to acquire legal title to the property.

(i) A corporation organized under the Texas Non-Profit Corporation Act ([Article 1396-1.01 et seq.](#), [Vernon's Texas Civil Statutes](#)), or a successor statute, that engages primarily in providing chilled water and steam to an eligible institution, as defined by [Section 301.031, Health and Safety Code](#), is entitled to an exemption from taxation of the property the corporation owns as though the property of the corporation were owned by this state and used for health or educational purposes.

(j) For purposes of this section, any portion of a facility owned by the Texas Department of Transportation that is a rail facility or system or is a highway in the state highway system, and that is licensed or leased to a private entity by that department under Chapter 91 or 223, Transportation Code, is public property used for a public purpose if the rail facility or system, highway, or facility is operated by the private entity to provide transportation or utility services. Any part of a facility, rail facility or system, or state highway that is licensed or leased to a private entity for a commercial purpose is not exempt from taxation.

**Credits**

Acts 1979, 66th Leg., p. 2234, ch. 841, § 1, eff. Jan. 1, 1980. Amended by Acts 1981, 67th Leg., 1st C.S., p. 127, ch. 13, § 30, eff. Jan. 1, 1984; Acts 1983, 68th Leg., p. 4821, ch. 851, § 5, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 5419, ch. 1007, § 1, eff. Jan. 1, 1984; Acts 1989, 71st Leg., ch. 796, § 14, eff. Jan. 1, 1990; Acts 1989, 71st Leg., ch. 1021, § 1, eff. Aug. 28, 1989; Acts 1990, 71st Leg., 6th C.S., ch. 12, § 2(31), eff. Sept. 6, 1990; Acts 1991, 72nd Leg., 2nd C.S., ch. 6, § 9, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 843, § 1, eff. Jan. 1, 1998; Acts 2001, 77th Leg., ch. 362, § 1, eff. May 26, 2001; Acts 2003, 78th Leg., ch. 1266, § 1.01, eff. June 20, 2003; Acts 2005, 79th Leg., ch. 281, § 2.95, eff. June 14, 2005; Acts 2007, 80th Leg., ch. 204, § 1, eff. Jan. 1, 2008; Acts 2009, 81st Leg., ch. 87, § 25.152, eff. Sept. 1, 2009; Acts 2011, 82nd Leg., ch. 259 (H.B. 1201), § 1, eff. June 17, 2011.

[Notes of Decisions \(140\)](#)

V. T. C. A., Tax Code § 11.11, TX TAX § 11.11

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Chapter 12. Charters (Refs & Annos)  
Subchapter D. Open-Enrollment Charter School

V.T.C.A., Education Code § 12.105

§ 12.105. Status

Effective: September 1, 2001

[Currentness](#)

An open-enrollment charter school is part of the public school system of this state.

**Credits**

Added by [Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995](#). Amended by [Acts 1999, 76th Leg., ch. 1335, § 1, eff. June 19, 1999](#); [Acts 2001, 77th Leg., ch. 1504, § 6, eff. Sept. 1, 2001](#).

[Notes of Decisions \(5\)](#)

V. T. C. A., Education Code § 12.105, TX EDUC § 12.105

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Subchapter D. Open-Enrollment Charter School

V.T.C.A., Education Code § 12.106

§ 12.106. State Funding

Effective: September 1, 2019

[Currentness](#)

(a) A charter holder is entitled to receive for the open-enrollment charter school funding under Chapter 48 equal to the amount of funding per student in weighted average daily attendance, excluding the adjustment under [Section 48.052](#), the funding under [Sections 48.101](#), [48.110](#), [48.111](#), and [48.112](#), and enrichment funding under [Section 48.202\(a\)](#), to which the charter holder would be entitled for the school under Chapter 48 if the school were a school district without a tier one local share for purposes of [Section 48.266](#).

(a-1) In determining funding for an open-enrollment charter school under Subsection (a), the amount of the allotment under [Section 48.102](#) is based solely on the basic allotment to which the charter holder is entitled and does not include any amount based on the allotment under [Section 48.101](#).

(a-2) In addition to the funding provided by Subsection (a), a charter holder is entitled to receive for the open-enrollment charter school an allotment per student in average daily attendance in an amount equal to the difference between:

(1) the product of:

(A) the quotient of:

(i) the total amount of funding provided to eligible school districts under [Section 48.101\(b\)](#) or (c); and

(ii) the total number of students in average daily attendance in school districts that receive an allotment under [Section 48.101\(b\)](#) or (c); and

(B) the sum of one and the quotient of:

(i) the total number of students in average daily attendance in school districts that receive an allotment under [Section 48.101\(b\)](#) or (c); and

(ii) the total number of students in average daily attendance in school districts statewide; and

(2) \$125.

(a-3) In addition to the funding provided by Subsections (a) and (a-2), a charter holder is entitled to receive for the open-enrollment charter school enrichment funding under [Section 48.202](#) based on the state average tax effort.

(a-4) In addition to the funding provided by Subsections (a), (a-2), and (a-3), a charter holder is entitled to receive funding for the open-enrollment charter school under [Sections 48.110](#) and [48.112](#) and Subchapter D, Chapter 48, if the charter holder would be entitled to the funding if the school were a school district.

(b) An open-enrollment charter school is entitled to funds that are available to school districts from the agency or the commissioner in the form of grants or other discretionary funding unless the statute authorizing the funding explicitly provides that open-enrollment charter schools are not entitled to the funding.

(c) The commissioner may adopt rules to provide and account for state funding of open-enrollment charter schools under this section. A rule adopted under this section may be similar to a provision of this code that is not similar to [Section 12.104\(b\)](#) if the commissioner determines that the rule is related to financing of open-enrollment charter schools and is necessary or prudent to provide or account for state funds.

(d) Subject to Subsection (e), in addition to other amounts provided by this section, a charter holder is entitled to receive, for the open-enrollment charter school, funding per student in average daily attendance in an amount equal to the guaranteed level of state and local funds per student per cent of tax effort under [Section 46.032\(a\)](#) multiplied by the lesser of:

(1) the state average interest and sinking fund tax rate imposed by school districts for the current year; or

(2) a rate that would result in a total amount to which charter schools are entitled under this subsection for the current year equal to \$60 million.

(e) A charter holder is entitled to receive funding under Subsection (d) only if the most recent overall performance rating assigned to the open-enrollment charter school under Subchapter C, Chapter 39, reflects at least acceptable performance. This subsection does not apply to a charter holder that operates a school program located at a day treatment facility, residential treatment facility, psychiatric hospital, or medical hospital.

(f) Funds received by a charter holder under Subsection (d) may only be used:

(1) to lease an instructional facility;

(2) to pay property taxes imposed on an instructional facility;

(3) to pay debt service on bonds issued to finance an instructional facility; or

(4) for any other purpose related to the purchase, lease, sale, acquisition, or maintenance of an instructional facility.

(g) In this section, “instructional facility” has the meaning assigned by [Section 46.001](#).

(h) Except as provided by Subsection (i), all remaining funds of a charter holder for an open-enrollment charter school that ceases to operate must be returned to the agency and deposited in the charter school liquidation fund.

(i) The agency may approve a transfer of a charter holder's remaining funds to another charter holder if the charter holder receiving the funds has not received notice of the expiration or revocation of the charter holder's charter for an open-enrollment charter school or notice of a reconstitution of the governing body of the charter holder under [Section 12.1141](#) or [12.115](#).

(j) The commissioner may adopt rules specifying:

(1) the time during which a former charter holder must return remaining funds under Subsection (h); and

(2) the qualifications required for a charter holder to receive a transfer of remaining funds under Subsection (i).

#### **Credits**

Added by [Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995](#). Amended by [Acts 2001, 77th Leg., ch. 1504, § 7, eff. Sept. 1, 2001](#); [Acts 2009, 81st Leg., ch. 1328, § 5, eff. Sept. 1, 2009](#). Amended by [Acts 2011, 82nd Leg., 1st C.S., ch. 4 \(S.B. 1\), § 57.02, eff. Sept. 28, 2011](#); [Acts 2011, 82nd Leg., 1st C.S., ch. 4 \(S.B. 1\), § 57.03, eff. Sept. 1, 2017](#); [Acts 2017, 85th Leg., 1st C.S., ch. 8 \(H.B. 21\), § 1, eff. Sept. 1, 2018](#); [Acts 2019, 86th Leg., ch. 631 \(S.B. 1454\), § 3, eff. June 10, 2019](#); [Acts 2019, 86th Leg., ch. 943 \(H.B. 3\), § 1.002, eff. Sept. 1, 2019](#).

#### [Notes of Decisions \(5\)](#)

V. T. C. A., Education Code § 12.106, TX EDUC § 12.106

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Subchapter D. Open-Enrollment Charter School

V.T.C.A., Education Code § 12.1071

§ 12.1071. Effect of Accepting State Funding

Effective: September 1, 2001

[Currentness](#)

(a) A charter holder who accepts state funds under [Section 12.106](#) after the effective date of a provision of this subchapter agrees to be subject to that provision, regardless of the date on which the charter holder's charter was granted.

(b) A charter holder who accepts state funds under [Section 12.106](#) after September 1, 2001, agrees to accept all liability under this subchapter for any funds accepted under that section before September 1, 2001. This subsection does not create liability for charter holder conduct occurring before September 1, 2001.

**Credits**

Added by [Acts 2001, 77th Leg., ch. 1504, § 8, eff. Sept. 1, 2001](#).

[Notes of Decisions \(2\)](#)

V. T. C. A., Education Code § 12.1071, TX EDUC § 12.1071

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