No. 19-0962

In The Supreme Court of Texas

ODYSSEY 2020 ACADEMY, INC.,

Petitioner,

v.

GALVESTON CENTRAL APPRAISAL DISTRICT,

Respondent.

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

BRIEF OF AMICUS CURIAE TEXAS PUBLIC CHARTER SCHOOLS ASSOCIATION IN SUPPORT OF PETITIONER

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

TPCSA, established in 2008, is the statewide nonprofit membership association of open-enrollment public charter schools throughout Texas. The mission of TPCSA is to accelerate student achievement in Texas by empowering and improving a diverse set of effective and quality-driven public charter schools.

TPCSA accomplishes this mission through four core functions: Member Services, Quality Framework, Advocacy, and the TPCSA Annual Conference. TPCSA provides services to member schools such as model board policies, training, legal assistance, and discount purchasing programs. Through the TPCSA Quality Framework, a research-improvement tool, TPCSA helps member schools assess quality and improve academic, financial, and operational effectiveness. TPCSA also provides strong, member-driven advocacy on behalf of Texas Public Charter Schools and annually hosts the Texas Charter Schools Conference, the largest gathering of charter stakeholders in the state that is committed to advancing quality public charter schools and improving student achievement.

TPCSA members are improving public education in Texas by offering students an alternative to traditional public schools by affording them specialized attention in mission-driven schools that are focused on college

preparation, dropout prevention, dropout recovery, alternative education, residential placement, and other important objectives. A board of directors that consists of a majority of charter school operators governs TPCSA. TPCSA is funding the preparation of this brief.

Odyssey's petition raises significant issues that have impact beyond the parties to this action, affecting many of TPCSA's open-enrollment charter school members. More importantly, as the legal issues relate to state funding provided to charter schools that is then diverted away through local property taxes, it directly impacts the children those charter schools serve throughout the state.

STATEMENT OF JURISDICTION

This charter school case presents questions of law that are important to the jurisprudence of the state (TEX. GOV'T CODE § 22.001(a)) because: a) it involves construction of two Texas statutes; b) it implicates provisions of the Texas Constitution; c) it affects a critical school finance component of our state's public-school system; and d) the court of appeals erred in construing a statute. The court's broad and erroneous ruling will thwart legislative intent and have absurd results by diverting State dollars away from their intended purpose.

The court of appeals' error reaches far beyond the parties to this appeal because the court's holding was unnecessarily broad for resolving this case. It therefore negatively impacts open enrollment charter schools that have historically been granted tax exemptions under differing facts. The court of appeals' opinion is already being used by other tax appraisal districts in litigation to strip other charter schools of their tax exemptions. It is vitally important to the State's public-school system to correct these errors.

The significance of this case to the students enrolled in charter schools and to the continued viability of charter schools throughout Texas demands this Court's attention.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

Charter schools derive their powers, authority, status, even existence from legislative command. *LTTS 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. This role in Texas' public education system is a crucial one. Open-enrollment charter schools are "a new and innovative form of public schooling," and an integral part of this State's public-school system. *Honors Acad., Inc. v. Texas Educ. Agency*, 555 S.W.3d 54, 63, 64 (Tex. 2018) (*citing* TEX. EDUC. CODE § 12.105).

Open-enrollment charter schools do not have the power to tax and are entitled to state funding based primarily on average daily attendance. *Honors Acad.,* 555 S.W.3d at 63, citing TEX. EDUC. CODE §§ 12.102, 12.106, and 12.104(c). Because of this reliance on state funding, the state designates the character of its funds and the items purchased or leased with those funds through legislation. *LTTS Charter Sch.,* 342 S.W.3d at 80 (*citing* TEX. EDUC. CODE Ch. 12). As relevant here, the legislature has mandated that all property either purchased or leased with state funds received by a charter holder is "public property for all purposes under state law," and is "property of this

state held in trust" for the benefit of the students. TEX. EDUC. CODE § 12.128(a)(1) and (a)(2).[1]

The dispute in this case is whether Odyssey's charter school property (the Property) that is leased with state funds constitutes public or publicly-used property entitled to exemption from ad valorem taxation. This is a significant issue affecting open-enrollment charter schools throughout the State. Many of TPCSA's member schools lack sufficient funds to purchase property outright, do not have bond financing options, or cannot find suitable property in desired locations available for purchase. Leasing property is often the only viable alternative, and the tax obligation, if any, is almost invariably the contractual obligation of the lessee. State funds are used to pay the lease obligations, and § 12.128(a) dictates that such leased property is property of the state for *all* purposes and is held in trust for the benefit of the school's students. The court of appeals erred in holding that Odyssey's leased Property is not property of the state for tax purposes.

The court of appeals' erroneous construction of § 12.128(a) leads to the absurd result that the State's funding, which is supposed to directly benefit the public school children enrolled in an open-enrollment charter school,

[1] Citations to 12.128 refer to the statute that was in effect at the time this dispute arose. A 2019 non-substantive amendment moved the operative statutory language regarding leased property to a new subsection 12.128(a-1).

will be diverted to local taxing authorities. This necessarily results in a reallocation of taxpayer dollars from the legislature's designated purpose, a result condemned by this Court in *El Paso Educ. Initiative, Inc. v. Amex Properties, LLC*, 602 S.W.3d 521, 530 (Tex. 2020).

In addition, the Texas Constitution mandates that "all other property devoted exclusively to the use and benefit of the public shall be exempt from forced sale and from taxation." TEX. CONST. ART. XI, § 9. Odyssey's exclusive use of the Property for the benefit of the public entitles it to a property tax exemption independent from the issue of fee ownership.

Moreover, the overbroad and erroneous holding of the court of appeals—that § 12.128 has no application outside the context of charter revocation—is already being used by other appraisal districts to reverse course by denying tax exempt status to TPCSA's members under different circumstances that have heretofore supported an exemption, such as a lease/purchase option, where there is indisputable "equitable ownership" for tax purposes. The court of appeals' incorrect and damaging holding must be reversed.

ARGUMENT AND AUTHORITIES

I. The Court Of Appeals' Construction Of Education Code § 12.128 Leads To Absurd Results And Thwarts Legislative Intent.

As Odyssey correctly asserts in its Brief, the court of appeals' interpretation of Education Code § 12.128 disregards the language of the statute and fails to give effect to the legislative mandate that charter school property purchased or leased with state funds, such as Odyssey's leased property, is "public property for all purposes under state law" and is held in trust for the public. TEX. EDUC. CODE § 12.128(a)(1) and (2). Moreover, the court of appeals' failure to properly apply § 12.128 leads to absurd results that are directly contrary to legislative intent and will negatively impact other open enrollment charter schools throughout the state.

As this Court has noted, open-enrollment charter schools, like public school districts, are largely publicly-funded. *El Paso Educ. Initiative*, 602 S.W.3d at 529; *see* TEX. EDUC. CODE § 12.106. State funding is based primarily on average daily attendance. TEX. EDUC. CODE § 12.106(a). All funds an open-enrollment charter school receives from the State are public funds and must be used exclusively for appropriate school purposes. TEX. EDUC. CODE § 12.107.

More specifically, these state-provided funds "are held in trust by the charter holder for the benefit of the students of the open-enrollment charter

school." *Id.* § 12.107(a)(2). In other words, the funds that any open enrollment charter school leasing its school property, such as Odyssey, receives from the State are held in trust to benefit *that schools' own students*. If such a charter school is forced to use precious state funds to pay local property taxes, those funds will be diverted away from the school's own students and paid out to local taxing authorities, including non-charter public school districts whose students are not enrolled in the charter school.

Addressing immunity of charter schools, this Court in *El Paso Educ. Initiative* held that "[d]iverting charter school funds to defend lawsuits and pay judgment affects the State's provision of public education and reallocates taxpayer dollars from the legislature's designated purpose." 602 S.W.3d at 530. Diverting charter school funds to pay local property taxes likewise "affects the State's provision of public education and reallocates taxpayer dollars from the legislature's designated purpose."

Not only is this an absurd result that thwarts the legislative purpose, it results in a grave inequity. Consider two hypothetical open enrollment charter schools whose similar student attendance and performance records result in both receiving the same amount of state funding. One leases its school property and the other owns it. Both schools use a portion of their state funds to pay the lease and mortgage payments, respectively, as

permitted by TEX. EDUC. CODE § 12.106(f). If the school that leases its property must also pay property taxes, that substantial payment will come out of its yearly budget, leaving it with fewer dollars available to directly benefit its students than the similarly-situated charter school that owns its property.[2]

This disparate impact becomes ever more pronounced when the charter school burdened with property tax payments is compared to the non-charter public schools in the taxing district, whose students will benefit from funds earmarked by the state—and by legislative mandate—to benefit the charter school students. This reallocation of taxpayer dollars from the legislature's designated purpose is improper and must not be permitted. *See El Paso Educ. Initiative*, 602 S.W.3d at 530.

GCAD argues that Odyssey's interpretation of § 12.128 leads to absurd results. Resp. Br. at 25. But it is GCAD's and the court of appeals'

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[2] A 2017 amendment to the Education Code allows a charter school to use certain earmarked funds to pay facility expenses, including mortgage and lease payments and property taxes. TEX. EDUC. CODE § 12.106(d) and (f). This is legislative recognition that appraisal districts are aggressively assessing property taxes against charter schools, rightly or wrongly, and it allows such schools to use state funds to pay property taxes under protest, for example, while challenging an assessment. This permitted use of funds in no way diminishes a charter school's entitlement to an exemption, which is governed by different statutes. In any event, even these facility funds are based on average daily attendance, further conditioned on performance. TEX. EDUC. CODE § 12.106(d) and (e). A charter school would not receive *additional* state funds simply because of a property tax assessment.

construction that does so. When state funds that are required by statute to be held in trust for the benefit of a charter school's students are reallocated to benefit, among others, *non*-charter school students, the entire public school finance system is in disarray. That result is absurd, inequitable, and certainly not efficient. *See* TEX. CONST. ART. VII, § 1; *Morath v. Texas Taxpayer & Student Fairness Coalition*, 490 S.W.3d 826, 844–45 (discussing the history of school finance jurisprudence analyzing the constitutional requirement of financial efficiency).

II. The Court Of Appeals' Overbroad And Imprecise Holding Is Already Having Negative Consequences In Tax Protests Involving Different Circumstances.

The court of appeals' holding went further than necessary to decide this case on its facts, creating limits not found in the legislation by limiting application of § 12.128 only to situations involving *revocation* of a charter holder's charter, despite the "for all purposes under state law" language. *Odyssey 2020 Academy, Inc. v. Galveston Cent. App. Dist.*, 585 S.W.3d 530, 535–36 (Tex. App.—Houston [14th Dist.] 2019, pet. filed) (holding that Odyssey's reliance on § 12.128 is "misplaced" because "the section does not mention taxes or exemptions at all"). The court's holding potentially forecloses *any* application of § 12.128 to the Tax Code, even under different fact scenarios where tax exemptions have previously been allowed.

For example, courts have historically recognized that an entity holding equitable title under a lease-for-purchase option is an "owner" of the property for tax purposes. *See Travis Cent. App. Dist. v. Signature Flight Support Corp.*, 140 S.W.3d 833, 840 (Tex. App.—Austin 2004, no pet.) ("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.").

The court of appeals' holding puts this authority in doubt by suggesting that § 12.128 has no application whatsoever outside of the context of charter revocation. The court first reasoned that § 12.128 "generally…comes into play when a school charter is revoked." *Odyssey*, 585 S.W.3d at 535. The court then concluded that § 12.128 did not apply for purposes of tax exempt status because the section "does not speak to tax exemptions" and "does not mention taxes or exemptions at all." *Id.* at 536.

This erroneous interpretation ignores that the statute need not "speak to" or "mention" tax exemptions because the legislature made abundantly

clear that it applied "for all purposes under state law." The Legislature's use of the phrase "for all purposes under state law" means what it says and obviates the need to mention any specific purposes such as tax exemptions. The court's holding ignores the plain language of the statute, violating sound principals of statutory construction.

The court of appeals compounded its refusal to recognize the expansive ("all means all") scope of § 12.128 by effectively limiting the scope of § 12.128 *only* to situations involving revocation of a charter-holder's charter—a conclusion that was not necessary to determine the instant case on its facts and not supported by the text of the statute. This error is already having the unintended effect of precluding application of § 12.128 to *any* situation involving tax exemptions, including those where exemptions have historically been recognized.

For example, if § 12.128 is applied as narrowly as the court of appeals holds, it would arguably not apply even where a charter school undisputedly holds equitable title such as in a lease-to-purchase agreement, or perhaps even where a charter school holds legal title. In both situations, the vast majority of appraisal districts with charter schools in their boundaries have recognized tax exemptions in the past, and it is imperative that they continue to do so.

TPCSA is not overstating the impact of this erroneous holding simply for effect. Several appraisal districts in Texas are already relying on the court of appeals' opinion to deny tax exemptions for some of TPCSA's charter school members with lease-to-purchase agreements, which provide the schools with equitable ownership. *See, e.g.*, *Jubilee Academic Center, Inc. v. Cameron Appraisal District*, Case No. 2019-DCL-05470 pending in the 404th Judicial District Court of Cameron County, Texas (the 404th Judicial District Court of Cameron County, Texas, last month granted summary judgment against the charter school that had a lease with purchase option and equitable title); *Harmony Education Foundation and Harmony Public Schools v. Tarrant Appraisal District*, Case No. 153-313213-19 pending in the 153rd Judicial District Court of Tarrant County, Texas; *Meadow Oaks Academy d/b/a Pioneer Technology & Arts Academy v. Dallas Central Appraisal District*, Case No. DC-19-17188 pending in the 193rd Judicial District Court, Dallas County, Texas.

Specific to the *Jubilee* action, the appraisal district filed a motion for summary judgment arguing that the court of appeals' decision in *Odyssey* prevents an exemption "even if [the school] has equitable title" because, according to *Odyssey*, § 12.128 has no application outside the context of charter revocation. Specifically, the appraisal district argued, "According to

Odyssey 2020 Academy, Inc. v. Galveston Cent. Appraisal Dist., the text in section 12.128 indicating that a leasehold is 'property of this state' affects instances in which a charter is revoked and does not address taxability of charter property." (Defendant's Motion for Summary Judgment filed September 8, 2020, in Cause No. 2019-DCL-5470). As noted above, the district court granted that motion, necessitating an appeal (at additional public expense) by Jubliee.

More recently, the Walker County Appraisal District cited the *Odyssey* opinion as its basis for denying a tax exemption request by Responsive Education Solution d/b/a Premier High Schools, a open-enrollment charter school, even though the school has an "irrevocable option to purchase" the property. *See* App. A.[3]

This use of the court of appeals' opinion to take away tax exemptions based on equitable title can only be prevented if this Court reverses the court of appeals' holding. An intermediate appellate court decision that erroneously changes the law in a way that goes far beyond the specific facts of the case before it is misguided and must be corrected by this Court.

[3] Appendix A is not in the record in this case, but it demonstrates how appraisal districts are using the erroneous *Odyssey* opinion to deny tax exemptions to schools even when they have equitable title to property under a lease-to-purchase option.

III. Education Code § 12.128 Mandates That Property Leased With Public Funds Is Public Property For All Purposes And Is Held In Trust For The Public.

TPCSA agrees with Odyssey's argument that the court of appeals erred in failing to properly interpret the clear and unambiguous language of Education Code § 12.128(a). The Property is exempt under Tax Code § 11.11 by virtue of Education Code § 12.128, which mandates that leased property is public property for all purposes and is held in trust for the public. TEX. EDUC. CODE § 12.128(a) and (a)(2). The court of appeals erred in reading *any* limitations into § 12.128 since the legislature made its intent for broad application clear by using the words "for all purposes."

A. *All means all.*

As this Court has succinctly noted, "[a]ll means all." *Davis v. Mueller*, 528 S.W.3d 97, 102 (Tex. 2017). By statute, the leased Property, which is paid for with public funds, is "public property for all purposes under state law." TEX. EDUC. CODE § 12.128(a)(1). The phrase "for all purposes" in § 12.128 means "for all purposes." The legislature could have ended the sentence there, and its broad intent would have been clear. But it went further to clarify that property purchased or leased with state funds is "public property for all purposes *under state law*." TEX. EDUC. CODE § 12.128(a) (emphasis added). The statute is not limited to all purposes "under this chapter" or all purposes "under this section." The legislative intent is clear: property

purchased or leased with state funds is public property for **all** purposes under **all** Texas law. This necessarily includes, contrary to the court of appeals' holding, the Texas Tax Code. All means all.

B. *The leased Property is "property of this state held in trust" for the public.*

Section 12.128 also mandates that property leased by an open enrollment charter school with state 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). Because open-enrollment charter schools are part of this state's public education system, their students are public school students. Leased property, paid with state funds, is thus held in trust for the public.

By virtue of this statutorily-imposed trust, the beneficiaries (Texas public charter school students) "become the owners of the equitable or beneficial title to the trust property and are considered the real owners." *Martin v. Martin*, 363 S.W.3d 221, 227 (Tex. App.—Texarkana 2012, pet. dism'd by agr.); *Faulkner v. Bost*, 137 S.W.3d 254, 258 (Tex. App.—Tyler 2004, no pet.); *Bradley v. Shaffer*, 535 S.W.3d 242, 248 (Tex. App.—Eastland 2017, no pet.).

This Court recognized in *Texas Turnpike Co. v. Dallas County*, 271 S.W.2d 400, 402 (Tex. 1954), that "equitable title is the taxable title" in

certain situations. More recently, this Court explained that "open-enrollment charter schools are expressly considered 'governmental entit[ies] for … [statutes] relating to property held in trust'." *Honors Acad.*, 555 S.W.3d at 64 (Tex. 2018) (*citing* TEX. EDUC. CODE § 12.1053).

The court of appeals ignored the effect of this statutory provision. While correctly noting that "equitable title may support a public entity's claim for a tax exemption," the court incorrectly concluded that there was no basis for asserting a tax exemption here through equitable title. *Odyssey*, 585 S.W.3d at 535. The legislatively-imposed trust provides that basis as a matter of law.

The court of appeals relied on *Texas Turnpike* for the proposition that ownership must be based on true facts, not legislative pronouncements. *Odyssey*, 585 S.W.3d at 534. But the legislature can impose a trust on property purchased or leased with state funds. The legislative imposition of that trust is an actual fact, which in turn legally changes the factual nature of beneficiaries' interest to equitable or beneficial title. This is very different from the situation in *Texas Turnpike*, where the legislature passed a statute purporting to declare that certain deeds to property held in escrow, which were conditioned and might never actually be delivered to the state, effectively transferred title to the state for tax purposes. *Texas Turnpike*, 271

S.W.2d at 402-403. Section 12.128(a) is not the type of counterfactual enactment denounced in *Texas Turnpike*.

IV. Texas Constitution Article XI, Section 9 Prohibits Taxation Of The Property Because It Is Devoted Exclusively To The Use And Benefit Of The Public.

The court of appeals' holding is contrary to the Texas Constitution. The court focused on Texas Constitution art. VIII § 2, which authorizes the legislature to exempt from taxation public property used for public purposes, and on Texas Tax Code § 11.11, which is the legislature's primary exercise of that authority. Another provision of the Texas Constitution, however, is "self-operative and absolutely exempts from taxation the public property therein referred." *ANM Consol. ISD v. City of Bryan*, 184 S.W.2d 914 (Tex. 1945). Texas Constitution art. XI, § 9 is self-effectuating in that it prohibits taxation of certain property without the need for legislative action. *Id*.

Article XI, § 9 exempts from both forced sale and from taxation certain property of counties, cities and towns, and "all other property devoted exclusively to the use and benefit of the public":

> § 9. Property Exempt From Forced Sale And From Taxation.
> The property of counties, cities and towns, owned and held only for public purposes, such as public buildings and the sites therefor, fire engines and the furniture thereof, and all property used, or intended for extinguishing fires, public grounds and all other property devoted exclusively to the use and benefit of the public shall be exempt from forced sale and from taxation, provided, nothing herein shall prevent the enforcement of the

> vendors lien, the mechanics or builders lien, or other liens now existing.

TEX. CONST. ART. XI, § 9.

Some constitutional provisions and enabling statutes regarding tax exemption focus on ownership, while others focus on the use of the property in question. For example, art. VIII § 2 of the Texas Constitution allows the legislature to exempt "actual places of religious worship" (use) and "property owned by a disabled veteran" (ownership). Some provisions require exclusivity regarding either ownership or use, while others do not.

The first section of art. XI, § 9 focuses on both ownership and use—property of municipalities "owned and held only for public purposes." But the latter section expressly exempts from taxation "all other property devoted exclusively to the use and benefit of the public." This latter provision focuses solely on use, requiring exclusive public use, and makes no mention of ownership. And it must refer to property *other* than property owned by municipalities else it would be surplusage.

In *LCRA v. Chemical Bank & Trust*, this Court held that art. XI, § 9 exempted all public property used exclusively for public purposes even though not owned by a county, city or town. 190 S.W.2d 48 (Tex. 1945) (holding that the exemption required by art. XI, § 9 extended to other

governmental units such as LRCA). In reaching its conclusion, the Court noted the futility of requiring a governmental entity to pay taxes. Otherwise:

> [the] government in Texas could engage in the senseless process of taxing itself, the net result of which would be but to take its own money out of one pocket for the purpose of putting it into another—less the cost of assessing and collecting the tax. Obviously that procedure could never accomplish anything but an idle expenditure of public funds.

LCRA, 190 S.W.2d at 51 (citing *State of New Mexico v. Locke*, 29 N.M. 148, 219 P. 790, 30 A.L.R. 407). Charter schools that lease property are typically required under the lease to pay any tax obligation. Since charter schools are funded by the state, taxing their leased property would be using public funds to pay a public debt.

Although the holding in *LCRA* has been discussed on occasion, it has not been disturbed. *See Leander ISD. v. Cedar Park Water Supply Corp.*, 479 S.W.2d 908, 913 (Tex. 1972) ("the holding in *Lower Colorado River Authority [v. Chemical Bank]* will not be disturbed since it is now firmly embedded in our jurisprudence"); *Satterlee v. Gulf Coast Waste Disp. Auth.*, 576 S.W.2d 773, 779 (Tex. 1978) (again declining to reconsider the holding in *LCRA*). In *State v. Houston Lighting & Power Co.*, 609 S.W.2d 263, 271 (Tex. Civ. App.—Corpus Christi 1980, writ ref'd n.r.e.), the court noted that "the holding by the majority in *Lower Colorado River Authority* has never

been disapproved or limited by any later decision of the Supreme Court." That is still true today.

The holding in *LCRA* is an accurate and literal reading of a constitutional provision requiring that property "devoted exclusively to the use and benefit of the public shall be exempt from … taxation." Although some intermediate appellate decisions have indicated that art. XI, § 9 may not extend to property that is not owned by a governmental entity, this portion of art. XI, § 9 requires only exclusive public use, not public ownership. *See, e.g., Hays County Appraisal Dist. v. S.W. Texas State Univ.*, 973 S.W.2d 419, 422-23 (Tex. App.—Austin 1998, no pet.). Even so, any public ownership requirement that may exist under this provision is satisfied here by the legislatively-imposed trust, which makes Texas public charter school students the equitable title-holders of the property. *See also Honors Acad.*, 555 S.W.3d at 64 ("open-enrollment charter schools are expressly considered 'governmental entit[ies] for … [statutes] relating to property held in trust'").

It is time for this Court to reconfirm its decision in *LCRA* and hold that under art. XI, § 9, Property held in trust for the public that is leased by a charter school with public funds is exempt from taxation because it is "devoted exclusively to the use and benefit of the public."

CONCLUSION

Amicus Curiae Texas Public Charter Schools Association respectfully requests that the Court reverse the court of appeals' decision and render judgment that Odyssey's Property is exempt from ad valorem taxation.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the length limitations of TEX. R. APP. P. 9.4(i)(3) because this brief consists of 4,131 words as determined by Microsoft Word Count, excluding the parts of the brief exempted by TEX. R. APP. P. 9.4(i)(1).

/s/ Dale Wainwright
Dale Wainwright

CERTIFICATE OF SERVICE

I certify that a copy of this Brief of Amicus Curiae was served on counsel of record by using the Court's CM/ECF system on the 8th day of October, 2020, addressed as follows:

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APPENDIX A

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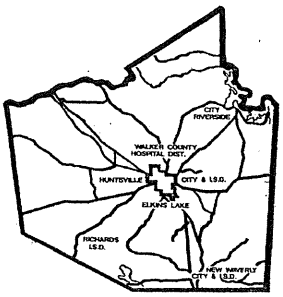

10/02/20

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RE: Application for Property Tax Exemption -Property ID: 26925
Geographic ID: 3501-008-0-01900
Legal description: FAR HILLS - SEC 1, LOT 19, ACRES 2.01

Dear Mr. Hoffer,

I have reviewed your application for exemption under Texas Tax Code section 11.11. Your application is respectfully denied. This is because the public property exemption requires property to be owned by a public entity. The applicant, Responsive Education Solution d/b/a Premier High Schools ("RES"), is not a public entity and does not own the subject property.

First, RES is a private charter school and not a public entity. Even though your August 5, 2020 letter states that section 12.128 of the Texas Education Code makes a private charter school a public entity, we conclude otherwise. According to *Odyssey 2020 Academy, Inc. v. Galveston Cent. Appraisal Dist.*, the text in section 12.128 indicating that a leasehold is "property of this state" affects instances in which a charter is revoked and does not address taxability of charter property. 585 S.W.3d 530, 536-17 (Tex. App.—Houston [14th Dist.] 2019, pet. filed), en banc review denied (Sept. 12, 2019).

In addition, RES is not the equitable owner of the subject property. Generally, an entity holds equitable title when it possesses "the present right to [compel] legal title." *TRQ Captain's Landing L.P. v. Galveston Cent. Appraisal Dist.*, 212 S.W.3d 726, 732 (Tex. App.—Houston [1st Dist.] 2006), aff'd sub nom *Galveston Cent. Appraisal Dist. v. TRQ Captain's Landing*, 423 S.W.3d 374 (Tex. 2014). Your August 5, 2020 letter on behalf of RES states that the RES has leased the subject property and obtained an "irrevocable option to purchase" the property. An option to purchase does not vest equitable ownership in RES because RES's interest in the subject property is contingent on RES exercising the option. See *Hays County Appraisal Dist. v. Sw. Texas State Univ.*, 973 S.W.2d 419, 422 (Tex. App.—Austin 1998, no pet.). Because RES does not have the present right to compel legal title, it is not the owner of the property for property tax purposes.

You may protest my denial by filing a written notice of protest to the Walker County Appraisal Review Board in accordance with the provisions and deadlines contained in Texas Tax Code Chapter 41.

Please feel free to contact me if you have any further questions or comments.

Respectfully,

Stacey M. Poteete

Stacey M. Poteete
Deputy Chief Appraiser

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Associated Case Party: Odyssey 2020 Academy, Inc.

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