

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

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

Petitioner,

v.

OKLAHOMA STATEWIDE CHARTER
SCHOOL BOARD; BRIAN T. SHELLEM,
ANGIE THOMAS, KATHLEEN WHITE,
DAMON GARDENHIRE, BECKY GOOCH,
JARED BUSWELL, BEN LEPAK, RYAN
WALTERS, and DR. KITTY CAMPBELL,
Members of the Oklahoma Statewide Charter
School Board,

Respondents,

ST. ISIDORE OF SEVILLE CATHOLIC
VIRTUAL SCHOOL,

Intervenor.

FILED
SUPREME COURT
STATE OF OKLAHOMA

JUL 30 2024

JOHN D. HADDEN
CLERK

Case No. 121,694

**PETITIONER'S NOTICE OF AUTOMATIC SUBSTITUTION OF PARTIES AND
REQUEST FOR THIS COURT TO REQUIRE SUBSTITUTED PARTIES TO
COMPLY WITH ITS WRIT OF MANDAMUS OR FACE A CONTEMPT CITATION**

Petitioner, Gentner Drummond, Attorney General for the State of Oklahoma, on behalf of the interests of the State of Oklahoma, respectfully provides notice to this Court of automatic substitution of parties and additionally requests this Court to require compliance with its June 25, 2024, Order, which, by writ of mandamus, directed the Oklahoma Statewide Virtual Charter School Board to rescind the St. Isidore charter school contract. In support of this notice and request, the Petitioner shows as follows.

A. NOTICE OF AUTOMATIC SUBSTITUTION OF PARTIES

Pursuant to 12 O.S. §§ 2025(C)–(D), Petitioner provides notice to this Court of the automatic substitution of parties. “Effective July 1, 2024, the Statewide Virtual Charter School Board shall be abolished and the Statewide Charter School Board shall succeed to any contractual rights and responsibilities . . . incurred by the Statewide Virtual Charter School Board in a virtual charter school sponsorship contract executed prior to July 1, 2024.” 70 O.S. § 3-132.1(I). When an interest is transferred, “the action may be continued by or against the original party.” 12 O.S. § 2025(C). Moreover, “[w]hen a public officer is a party to an action in the official capacity of the public officer and” the officer “ceases to hold office, the action does not abate and the successor of the public officer is automatically substituted as a party.” *Id.* at § 2025(D)(1).

The Oklahoma Legislature transferred an interest—the St. Isidore of Seville Catholic Charter School charter contract—from the abolished Oklahoma Statewide Virtual Charter School Board to the newly-formed Oklahoma Statewide Charter School Board. *See* 70 O.S. § 3-132.1(I). The contract at issue was executed on October 16, 2023, *see* Pet. App. Vol. I at 21, and was therefore “executed prior to July 1, 2024.” *See* 70 O.S. § 3-132.1(I). The new Oklahoma Statewide Charter School Board is composed of nine members,¹ *id.* at § 3-132.1(A), taking the place of the members of the abolished Oklahoma Statewide Virtual Charter School Board. By operation of law, on July 1, 2024, the new Oklahoma Statewide Charter School Board and its nine members, in their official capacities, succeeded to the rights and responsibilities associated with the St. Isidore contract. Thus, this Court’s Order—including the issuance of a writ of mandamus and granting of declaratory judgment—issued June 25, 2024, “direct[s] the [newly created] Charter School Board to rescind the contract with St. Isidore,” *Drummond ex. rel. State v. Okla. Statewide Virtual*

¹ The nine members are as follows: Brian T. Shellem, Angie Thomas, Kathleen White, Damon Gardenhire, Becky Gooch, Jared Buswell, Ben Lepak, Ryan Walters, and Dr. Kitty Campbell.

Charter Sch. Bd., 2024 OK 53, ¶ 45, 2024 WL 3155937, *10, due to the automatic substitution of the parties.

Accordingly, the Oklahoma Statewide Charter School Board and its members are automatically substituted as parties to this action and the style of the case in this Notice and Request reflects that substitution. *See* 12 O.S. § 2025(D) (“Proceedings following the substitution shall be in the name of the substituted party . . .”).

B. REQUEST FOR THIS COURT TO REQUIRE THE SUBSTITUTED PARTIES TO COMPLY WITH ITS ORDER ISSUING A WRIT OF MANDAMUS.

As of the filing of this Notice and Request, the Oklahoma Statewide Charter School Board and its members have not complied with this Court’s Order issued and filed with the clerk on June 25, 2024. In this original jurisdiction proceeding, “the decision of this Court, unless it is stayed . . . shall become effective when its opinion or order is filed with the clerk.” Okla.Sup.Ct.R. 1.193. This Court required “[a]ny petition for rehearing regarding this matter shall be filed within (10) days of the date of this opinion.” *Drummond ex. rel. State*, 2024 OK 53, § 45. But orders issued in original jurisdiction matters are “*not* stayed during the time for filing and consideration of a petition for rehearing.” *Chronic Pain Assocs., Inc. v. Bubenik*, 1994 OK 127, ¶ 31, 885 P.2d 1358, 1364. While a concurring Justice once noted that the “*immediate effect* of [an order in an original jurisdiction matter] *may be stayed*,” *Morgan v. Daxon*, 2001 OK 104, ¶ 4, 49 P.3d 687, 687, (Opala, J., concurring), no such stay has been entered in this matter. Yet for nearly a month, the Oklahoma Statewide Charter School Board has ignored this Court’s patently clear Order requiring rescission of the unlawful contract. Every day the Oklahoma Statewide Charter School Board refuses to comply with this Court’s Order is another day that a state-established religious school persists. That is repugnant to Oklahoma and federal law and must be immediately remediated.


The Petitioner has informed the Oklahoma Statewide Charter School Board and its members of their obligation to follow this Court's June 25, 2024, Order.² Inexplicably, they failed to follow their oath of office by ignoring this Court's Order to rescind the unlawful contract. Consequently, Petitioner believes that he currently has grounds to seek a contempt citation. But in the spirit of comity, Petitioner requests that this Court provide the Oklahoma Statewide Charter School Board and its members one last opportunity to comply with this Court's Order. Moreover, Petitioner requests the Court make it clear that any further refusal to follow this Court's Order will be grounds for the issuance of a contempt citation. 21 O.S. §§ 565 and 567; *In re J.H.*, 2008 OK 104, ¶ 16, 213 P.3d 545, 549.

CONCLUSION

Wherefore, upon notice of automatic substitution of parties, Petitioner respectfully requests this Court compel the Oklahoma Statewide Charter School Board, Brian T. Shellem, Angie Thomas, Kathleen White, Damon Gardenhire, Becky Gooch, Jared Buswell, Ben Lepak, Ryan Walters, and Dr. Kitty Campbell to comply with its June 25, 2024, Order, by writ of mandamus, requiring rescission of the unlawful charter school contract with St. Isidore. Further, Petitioner requests that the Court make clear that further refusal to follow the June 25, 2024, Order will be grounds for the issuance of a contempt citation.

² See July 11, 2024, letter from Oklahoma Attorney General Gentner Drummond to Oklahoma Statewide Charter School Board, attached hereto as "Exhibit A."

Respectfully Submitted,



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Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of July 2024 a true and correct copy of the foregoing instrument was mailed by depositing it in the U.S. Mail, postage prepaid to the following:

Brian T. Shellem
Angie Thomas
Kathleen White
Damon Gardenhire
Becky Gooch
Jared Buswell
Ben Lepak
Ryan Walters
Dr. Kitty Campbell
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A handwritten signature in black ink, appearing to read "Garry M. Gaskins, II". The signature is written in a cursive style with some stylized flourishes.

GARRY M. GASKINS, II

Exhibit A



GENTNER DRUMMOND
ATTORNEY GENERAL

July 11, 2024

Via Interagency Mail and Email

Statewide Charter School Board
M.C. Connors Building
2501 N. Lincoln Blvd., Ste. 301
Oklahoma City, OK 73105
rebecca.wilkinson@scsb.ok.gov

Director Wilkinson and Board Members,

Effective immediately, my office will serve as counsel to the Statewide Charter School Board ("SCSB" or "Board") consistent with title 74, section 20i.


Title 74, section 20i requires the Attorney General to serve as counsel to all state agencies, boards, and commissions unless the agency possesses legal authority to employ an attorney or, if the Attorney General is unable to represent the agency, board, or commission, contract with a private attorney.

At the Board's inaugural meeting, my office observed that counsel for the Board's predecessor, the Statewide Virtual Charter School Board ("SVCSB"), attended, provided counsel, and joined board members in executive session. Despite informing you, Dr. Wilkinson, on June 28, 2024, that Mr. Carsey's representation of the Board was denied, Mr. Carsey was invited to serve as counsel *without* the Board's approval. Giving you the benefit of the doubt, my office will not oppose the SCSB paying for Mr. Carsey's legal services regarding the Monday, July 8, 2024, meeting.

Of greater importance, you must know and accept that no state agency, board, or commission may willfully ignore an order from Oklahoma's highest court. Under Mr. Carsey's counsel, the SCSB and SVCSB have *twice* failed to rescind the contract as *unequivocally* ordered by the Oklahoma Supreme Court. In the first instance, it appeared as though Mr. Carsey did not understand the SVCSB needed three (3) votes to rescind the contract. *See* 70 O.S.2021, § 3-145.2(B) (repealed as of Jul. 1, 2024). Two of three board members voted to rescind the contract, while another abstained. In the second instance, Mr. Carsey again failed to counsel the SCSB about its obligations under the Supreme Court's *writ of mandamus*. *Drummond v. Okla. Statewide Virtual Charter Sch. Bd., et al.*, 2024 OK 53, ¶ 45. Title 70, section 3-102.1(I)(1) of the Oklahoma Statutes transferred the SVCSB's obligations to the SCSB. Rather than abiding by the Supreme Court's order, the Board has disregarded its duties by deferring to the Intervenor's litigation whims. Accordingly, and immediately, the SCSB must obey the Court's *writ of mandamus* and

rescind the St. Isidore contract by (1) calling a special meeting or (2) moving the next regularly scheduled board meeting to no later than the last day of this month as permitted by section 311(A)(8) of the Open Meeting Act.

My office and I are ready and able to represent the Board, and we will do so. Coordinate with my General Counsel, Rob Johnson, to negotiate and finalize a legal services contract between my office and the Board. Mr. Johnson can be contacted by email at rob.johnson@oag.ok.gov or by phone at (405) 521-3921.



GENTNER DRUMMOND
Oklahoma Attorney General

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