

TABLE OF CONTENTS

Statement of Jurisdiction . . . 3

Statement of Facts 3

Points Relied On 4

Argument 7

Conclusion 14

Certificate of Service 16

Rule 84.06 Certification . . . 17

TABLE OF CASES AND OTHER AUTHORITIES

Coalition to Preserve Educ. On the Westside v. School Dist. Of Kansas City, Missouri, 649 S.W.2d 533 (Mo.App. W.D. 1983) 4, 8

Mays-Maune& Associates, Inc. v. Werner Brothers, Inc., 2004 WL 1554480 (Mo.App.E.D. 2004). 4, 8

Normandy School District v. City of Pasadena Hills, 70 S.W.3d 488 (Mo.App. E.D. 2002). 4, 8

State ex rel. Proctor v. Bryson, 100 S.W.3d 775 (Mo.banc 2003). 4, 7

Willamette Industries, Inc. v. Clean Water Com’n of State of Mo., 34 S.W.3d 197, 201 (Mo.App. W.D. 2000). 6, 13

Mo.Const.Art.IX, §1(a). 5, 10

§160.051, RSMo. 2000 ¹	5, 11
§160.405.	5, 6, 8, 9, 13
§160.420, RSMo. Supp. 2003.	6, 12, 13
§160.522	5, 11
§162.695	5, 11
§162.471.	5, 8
§177.011.	5
§177.031.	5
20 U.S.C. §1412(a)(3)(A)	5, 11
7 C.F.R. §245.5.	5
34 C.F.R. §300.125	5, 11
Missouri State Plan for Special Education	5, 11

¹ All references will be to the 2000 edition of Missouri Revised Statutes unless otherwise noted.

STATEMENT OF JURISDICTION

This action involves a writ of prohibition that was issued by the Missouri Court of Appeals, Western District prohibiting the enforcement of the Respondent's Order Granting Preliminary Injunction against the Relators. This action involves the construction of state statute and the Court granted transfer of this case after a decision was rendered by the Missouri Court of Appeals, Western District, therefore the Court has jurisdiction over this case pursuant to Article V, Section 3 of the Missouri Constitution and Rule 83.04.

STATEMENT OF FACTS

MSBA adopts the statement of facts submitted by the School District of Kansas City, Missouri, in its brief to this Court.

POINTS RELIED ON

I. Relator School District of Kansas City, Missouri (“District) is entitled to an order prohibiting Respondent’s Order Granting Preliminary Injunction which restricts the District from engaging in any act or omission that would withdraw, rescind, terminate or interfere with Westport’s use of the Districts’ facilities, equipment and property because the Order exceeds the Respondent’s jurisdiction and the District will suffer irreparable harm if it is enforced in that §§177.011 and 177.031 RSMo. 2000 entrust the governance of District facilities, equipment and property to the School District, §160.405.8 prohibits charter schools from using District property without permission from the District and the Order prevents the District from accessing, caring for, or using its own property.

Coalition to Preserve Educ. On the Westside v. School Dist. Of Kansas City,

Missouri, 649 S.W.2d 533 (Mo.App. W.D. 1983)

Mays-Maune& Associates, Inc. v. Werner Brothers, Inc., 2004 WL 1554480

(Mo.App.E.D. 2004)

Normandy School District v. City of Pasadena Hills, 70 S.W.3d 488 (Mo.App. E.D. 2002)

State ex rel. Proctor v. Bryson, 100 S.W.3d 775, 776 (Mo.banc 2003)

§160.405

§162.471

§177.011

§177.031

II. Relator District is entitled to an order prohibiting Respondent’s Order Granting Preliminary Injunction, which restrains the District from expressly or impliedly inducing students to attend District schools other than Westport, because the Order exceeds the Respondent’s jurisdiction in that the District is required to communicate with students, parents and patrons regarding the services available at the District’s schools pursuant to §160.522, §162.695, 7 C.F.R. §245.5, 20 U.S.C. §1412(a)(3)(A), 34 C.F.R. §300.125, and the *Missouri State Plan for Special Education*.

Mo.Const.Art.IX, §1(a)

§160.051

§160.522

§162.695

20 U.S.C. §1412(a)(3)(A)

7 C.F.R. §245.5

34 C.F.R. §300.125

Missouri State Plan for Special Education

III. Relator District is entitled to an order prohibiting Respondent’s Order Granting Preliminary Injunction, which restrains the District from attempting to induce teachers at Westport to contract to teach elsewhere, because the Respondent’s Order interferes with the District’s ability to

communicate with its own employees in that some of the teachers at Westport are also employees of the District under §160.420, RSMo. Supp. 2003.

§160.420, RSMo. Supp. 2003

IV. Relator District is entitled to an order prohibiting Respondent's Order Granting Preliminary Injunction, because the Respondent did not have jurisdiction to issue the Order in that Westport has a legal obligation to exhaust administrative remedies before seeking judicial review and Westport did not exhaust its administrative remedies.

Willamette Industries, Inc. v. Clean Water Com'n of State of Mo., 34 S.W.3d 197, 201 (Mo.App. W.D. 2000)

§160.405.2

ARGUMENT

I. Relator School District of Kansas City, Missouri (“District) is entitled to an order prohibiting Respondent’s Order Granting Preliminary Injunction which restricts the District from engaging in any act or omission that would withdraw, rescind, terminate or interfere with Westport’s use of the Districts’ facilities, equipment and property because the Order exceeds the Respondent’s jurisdiction and the District will suffer irreparable harm if it is enforced in that §§177.011 and 177.031 RSMo. 2000² entrust the governance of District facilities, equipment and property to the School District, §160.405.8 prohibits charter schools from using District property without permission from the District and the Order prevents the District from accessing, caring for, or using its own property.

A writ of prohibition is appropriate to “remedy an excess of jurisdiction or an abuse of discretion where the lower court lacks the power to act as intended,” or when a party may suffer irreparable harm if relief is not granted. State ex rel. Proctor v. Bryson, 100 S.W.3d 775, 776 (Mo.banc 2003).

The Respondent’s Order Granting Preliminary Injunction (“Order”) prohibits the District from engaging in “any act or omission that would . . .

² All references will be to the 2000 edition of Missouri Revised Statutes unless otherwise noted.

interfere with Westport's use of the school facilities and/or equipment and property therein for the conduct of school operations . . .”

State statute and caselaw clearly gives only the District the authority and the responsibility to care and keep the property of the District. *See §162.471; §177.011; §177.031; Normandy School District v. City of Pasadena Hills*, 70 S.W.3d 488 (Mo.App. E.D. 2002); Coalition to Preserve Educ. On the Westside v. School Dist. Of Kansas City, Missouri, 649 S.W.2d 533 (Mo.App. W.D. 1983). Further, state statute expressly denies charter schools the right to use District property without permission of the District. §160.405.8 (“A charter school may not be located on the property of a school district unless the district governing board agrees.”)

Regardless of how the due process issues involving the charter itself are decided, Respondent's Order goes beyond the existence or non-existence of the charter and strips the District of its access and control of District property in violation of state law. Westport currently occupies a District-owned and maintained building. There is no lease between Westport and the District. An implied contract cannot be enforced against a school district. Mays-Maune & Associates, Inc. v. Werner Brothers, Inc., 2004 WL 1554480 (Mo.App.E.D. 2004). The School District has timely notified Westport that it may not use District facilities. Therefore, the governing board of the District does not agree to the use of District property by the charter school, and pursuant to §160.405.8 Westport may not utilize District buildings. Despite the fact that Westport has no legal right

to occupy the District's property, the Order prevents the District from entering the property to make repairs or improvements, or to protect District property for fear it will "interfere" with Westport's use of the facilities.

Worse, the Respondent's Order prohibits the district from obtaining access to the property "until statutory procedures are followed as set out in this order . . ." However, the court does not clearly state in the Order which statutory procedures the district has not already provided.

According to the Order, the District must follow the process for granting an initial charter as set out in §160.405. *Order Granting Preliminary Injunction, Conclusions of Law, ¶ 7*. That process was followed prior to the Respondent's Order. An application for a charter was submitted to the District, the district made a decision within 60 days of the application, and Westport was notified that the charter was denied and the reasons for the denial were provided in writing. *§160.405.2; Order, Findings of Fact ¶16, 19, 23, 24*. Nevertheless, the District may not have access to the property until the District completes some additional unknown procedure that is not spelled out in statute or in the Respondent's Order.

The Respondent's Order exceeds its jurisdiction and if enforced, the District will suffer irreparable harm. Therefore the writ of prohibition was necessary and appropriate.

II. Relator District is entitled to an order prohibiting Respondent's Order Granting Preliminary Injunction, which restrains the District from expressly or impliedly inducing students to attend District schools other than Westport,

because the Order exceeds the Respondent’s jurisdiction in that the District is required to communicate with students, parents and patrons regarding the services available at the District’s schools pursuant to §160.522, §162.695, 7 C.F.R. §245.5, 20 U.S.C. §1412(a)(3)(A), 34 C.F.R. §300.125, and the Missouri State Plan for Special Education.

The Order prohibits the District from attempting “expressly or impliedly to induce students to attend District schools other than Westport for summer school or the Fall 2004 – Spring 2005 school year . . .”

The Order prohibits the District from communicating with students it is required by law to educate. For instance, if a student or a parent of a student who had previously attended Westport requested enrollment information, the District could not respond because the answers might “induce” the student to attend District schools.

Further, the Order is not limited to students who have previously attended Westport. The plain language of the Order prohibits the District from informing any students about the educational services available at the District because it could encourage students to attend District schools and not Westport. Even a regular newsletter to District patrons reporting school business and test scores could “impliedly” induce students to attend the District’s schools.

The District is legally obligated to educate students and communicate with students and parents that live within the District. *See Mo.Const.Art.IX, §1(a);*

§160.051.1, RSMo. §160.522, RSMo. (Distribute a school accountability report card); 7 C.F.R. §245.5 (Provide notice of free and reduced lunch program).

In particular, the District has a strict obligation under state law and the federal Individuals with Disabilities Education Act to advertise the District's special education services, locate students with disabilities and offer them special education services through the District when they are eligible, even when these students are being educated outside the District. 20 U.S.C. §1412(a)(3)(A)³; 34 C.F.R. §300.125; §162.695. In fact, the Missouri State Plan for Special Education, a document Missouri school districts must follow to receive federal funds, explicitly requires all Missouri school districts, including the Relator District, to annually advertise the services available at District schools to patrons by newspaper, radio, television and other means. *Missouri State Plan for Special Education, III. Identification and Evaluation, pg. 11-12.*

³ “All children with disabilities residing in the State, including children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.”

The Respondent does not have the jurisdiction or authority to issue an order that prevents the District from communicating with its patrons and forces the District to violate state and federal law.

III. Relator District is entitled to an order prohibiting Respondent’s Order Granting Preliminary Injunction, which restrains the District from attempting to induce teachers at Westport to contract to teach elsewhere, because the Respondent’s Order interferes with the District’s ability to communicate with its own employees in that some of the teachers at Westport are also employees of the District under §160.420, RSMo. Supp. 2003.

The Order prohibits the district from attempting “to induce teachers at Westport to contract to teach elsewhere. . .”

Many of the teachers at Westport are also employees of the District pursuant to §160.420, RSMo. Supp. 2003, part of the charter school statutory scheme. Pursuant to the statute, these teachers retain tenure and seniority status and participate in the district’s retirement system. *Id.*

If the employee seeks a transfer back to the District, the court’s order would prohibit the District from processing the transfer request even though all District employees by policy have the right to request a transfer. If a teacher requests information regarding District benefits or available positions, the court’s order prevents the District from responding.

The District needs to communicate with Westport employees as it does with all its employees. The Respondent’s order has created a serious barrier

between the District and its employees which is contrary to the joint employment created under §160.420, RSMo. and therefore is beyond the jurisdiction of the Respondent to order, and which will cause irreparable harm to both the employees and the District.

IV. Relator District is entitled to an order prohibiting Respondent's Order Granting Preliminary Injunction, because the Respondent did not have jurisdiction to issue the Order in that Westport has a legal obligation to exhaust administrative remedies before seeking judicial review and Westport did not exhaust its administrative remedies.

The Respondent did not have jurisdiction to issue an injunction in this controversy because Westport did not first avail itself of the administrative remedies provided by statute. Courts require plaintiffs to exhaust available administrative remedies before resorting to the court system because agencies have special expertise, will develop a full factual record, and may resolve the issue without requiring court review. Willamette Industries, Inc. v. Clean Water Com'n of State of Mo., 34 S.W.3d 197, 201 (Mo.App. W.D. 2000)

The Respondent's Order concludes that the procedure to follow to renew a charter "is the same . . . as for the initial granting of a charter." *Order, Conclusions of Law*, ¶ 7. If this is true, §160.405.2(3), provides a remedy when potential sponsors deny charters – appeal to the state board of education. If the state board agrees that the application should be granted, the state board may grant

the charter and serve as its sponsor. Westport did not avail itself of the statutory remedy available to it and instead looked to the Respondent for relief.

Westport claims an injunction is necessary to resolve this issue prior to the beginning of school. However, Westport's own delay caused this dilemma. Westport did not submit an application for renewal of the charter until April 1, 2004, and then only after district officials reminded Westport that an application was required. By statute, the district had up to 60 days to make a decision after the application was submitted. *§160.405.2(1), RSMo*. The district made a decision in half that time. If Westport had diligently pursued its charter and exhausted its appeals in a timely fashion there would be no urgency. Westport cannot use its own delay to escape its obligation to exhaust all administrative remedies as required by law.

CONCLUSION

Respondent's Order is unduly restrictive. It has removed District authority over its own property, contrary to state law including the charter school statutes. The Order prohibits the district from communicating with students living in the district, forcing the district to violate its state and federal legal obligations. The Order unduly restricts District communications with its own employees, whose dual employment was created and sanctioned in the charter school statutes. In addition, the Order was beyond the Respondent's jurisdiction because Westport had not exhausted its administrative remedies by appealing to the state board of education first, before seeking a judicial remedy.

WHEREFORE, for the reasons above stated, MSBA requests the Court to uphold the writ of prohibition

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RULE 84.06 CERTIFICATION

I hereby certify that this brief complies with the limitations contained in Rule 84.06(b) and contains 3,365 words. The disk submitted with this brief has been scanned for viruses and to the best of my knowledge is virus-free.

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