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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

SC Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Appellate Case No. 2012-212001

Palmetto Youth Academy Charter School,Respondent,

v.

Florence County School District One Board of Trustees,.....Appellant.

FINAL REPLY BRIEF OF APPELLANT

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ARGUMENT

There was substantial evidence in the record of the case to support the School District's decision to revoke the charter of the school, that decision was not clearly erroneous, nor was it arbitrary, capricious, and did not constitute an abuse of discretion or an unwarranted exercise of discretion.

The Appellant has questioned the propriety of the ruling of the Administrative Law Court. When the Administrative Law Court ruled that the School District was justified in determining that the charter school failed to meet generally accepted standards of fiscal management and the School District was therefore entitled to revoke the charter, it was inconsistent for the Court to say there was a lack of substantial evidence to justify the revocation or that the School District was arbitrary, capricious and had abused discretion in revoking the charter.

The accountability for the expenditures in public funds has always been important. It was important in the early developments of our system of governance. It is no less important today. Indeed, as time goes on exposures of inappropriate use of public funds brings about a tightening of controls. That part of an ongoing process of refinement of accountability.

It is clear that the School District had earlier questions about how PYA was handling its finances. It is also clear that PYA was not giving satisfactory response to the questions raised. The letter of April 9, 2009 from Larry L. Jackson, Superintendent of the School District to PYA shows that Mr. Luther Rabon, Chief Financial Officer of the School District, had begun discussions with PYA about an audit of PYA for 2007-2008 school year (R51-R55). This letter narrates in detail the history of the problem on this issue. The letter states that Mr. Rabon had suggested that PYA use the services of Baird & Company, CPA, the same company that provided audit services for the School District.

Mr. Rabon stated that PYA declined those services because their quoted price of \$6,000 was too much. PYA at the time indicated it would use the services of an alternate source.

The letter goes on to state that Mr. Rabon shared the concerns of the School District's auditor and scheduled a meeting with PYA and its auditor for December 12, 2008. No one from PYA showed up for that meeting. PYA did respond by letter of December 17, 2008 in which it stated it would be working with a local financial consultant to complete a more accurate and detailed audit for 2007-2008.

The letter states that in the winter of 2009 Mr. Rabon inquired of PYA about the status of its audit. PYA responded that it had been informed by the South Carolina State Department of Education that an audit was not required. The School District's auditor questioned what the State Department of Education had said. The State Department of Education reviewed the matter and concluded that the information it sent to PYA about an audit not being required was in error. Mr. Rabon contacted PYA and agreed to provide them with additional time to secure the audit. PYA indicated to Mr. Rabon that they would have an audit done by a firm in North Carolina. With that commitment from PYA, the School District agreed to extend the deadline for submission of the audit to March 17, 2009.

The letter of Mr. Jackson comments that on March 17, 2009 the School District was informed by PYA that it would not have an audit because it did not have the funds to pay for the cost of the audit of \$16,000. On the evening of March 17, 2009 the school board of the School District was informed by its auditors that the School District would receive a qualified opinion as a result of the omission of PYA's audit.

Mr. Jackson's letter further states that on March 24, 2009 officials of the School District met with officials of the State Department of Education which included its legal counsel. The State Department of Education gave an unequivocal answer that PYA was required to submit an audit. Following that meeting Shelly Bezanson Kelly, General Counsel for the State Department of Education, issued an opinion letter of March 31, 2009 stating that PYA was required to submit an audit (R56-57).. The letter cited S.C. Code Ann. Section 59-40(B)(3) which states that a charter school must "adhere to the same financial audits, audit procedures, and audit requirements as are applied to public school." The State Department's letter also commented that the charter application of PYA stated that it would "contract with a Licensed CPA with experience in school financing to provide financial accounting services and we will utilize a separate agency for audit services." The State Department's letter further comments that the charter school law states that "a charter must be revoked or not renewed by the sponsor if it determines that the charter school:

- (1) committed a material violation of the conditions, standards, or procedures provided for in the charter application;

- (3) failed to meet generally accepted standards of fiscal management; or

The letter of Superintendent Jackson of April 9, 2009 (R51-55) to PYA enclosed a copy of the letter of the State Department. The letter of Mr. Jackson goes on to discuss the nature of the audit requirements. The letter of Mr. Jackson also states that the School District offered to meet with PYA to give them advise and recommendations on how to set up their books based on the accounting and funding manual produced by the State

Department of Education. The letter further states that at the time of the letter PYA had not revealed the name of its auditor.

To summarize how the Respondent went at this, it starts off balking that it is not required to do an audit at all. When the State Department of Education shoots down that approach, it then plays around with a contention that the audit is too expensive and that it does not have the funds to pay for an audit. When the School District revokes its charter for failure to meet audit requirements, PYA requested a hearing. The hearing produces testimony from the School District about these problems of PYA not having an audit done. PYA does not produce any testimony in response.

The record of the case reveals that the auditors brought in by the School District showed there were problems with funds expensed to Palmetto Youth Academy and other funds expensed to Palmetto Youth Services. At the hearing before the Administrative Law Court counsel for PYA commented that Palmetto Youth Academy and Palmetto Youth Services were the same thing. There is nothing in the record of the case to support that statement.

If they were both the same thing, that explanation could have been given when the auditors first met with PYA and raised the question about Palmetto Youth Services. The explanation could have been given at every time the audit question was raised. Even if Palmetto Youth Services and Palmetto Youth Academy are the same legal entity, that does not answer the question about the commingling of funds within the organization.

The funding which PYA receives from the School District are public funds which are appropriate by state and governmental agencies for education of children. The

funding which governmental agencies provide for education is a finite thing. It is never enough to provide optimal educational programs for children.

School age children may have other needs such as food, shelter, clothing and health care. The public schools are not funded to provide for those services. If Palmetto Youth Services is a charitable corporation, it can provide for charity needs of children beyond their education and still operate within its tax-exempt status. As a charter school it cannot divert education funds to other needs of children no matter how noble those needs are.

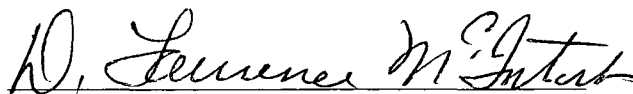
In the end the Respondent has not come clean with what it has done with the funds it received from the School District. The School District was entitled to an audit of those funds. The School District is required by statute to insist on that audit.

It is clear through these proceedings that the District has had a continuing concern about how PYA was expending the funds it received from the School District. The Respondent by its brief has asserted that the School District has conceded that the Administrative Law Court was correct in ruling that there was no substantial evidence in the record of the case to support the decision of the School District. No such concession was made then nor is any such concession made now.

The School District submits there was substantial evidence to support its action and that the decision of the Administrative Law Court should be reversed in that regard. This matter is before the court on very serious issues and very serious concerns which the School District has about those issues and the ruling made by the Administrative Law Court. The merits of those concerns need to be met fully.

CONCLUSION

There was substantial evidence in the record of the case that PYA was not adhering to the same financial audits, audit procedures, and audit requirement as are applied to public schools. This is a statutory requirement of the Charter School Act. This supported a finding that the charter school had failed to meet generally accepted standards of fiscal management. The financial issues presented in the case show that there was reliable, probative and substantial evidence on the whole record to support the action taken by the School District and that its action was not clearly erroneous. The action taken by the School District cannot be set aside on the basis that it was arbitrary, capricious, or characterized by abuse of discretion or was a clear unwarranted exercise of discretion. The decision of the Administrative Law Court should be reversed and action taken by the School Board affirmed.



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September 18, 2012

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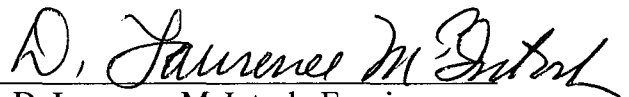
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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the Final Reply Brief of Appellant complies
with Rule 211(b), SCACR.



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CERTIFICATE OF SERVICE

I, the undersigned employee of McIntosh Law Office, do hereby certify that the foregoing Final Reply Brief of Appellant has this day been served by Federal Express to the following person, this 18th day of September, 2012.

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