

STATE OF SOUTH CAROLINA)
 COUNTY OF CHARLESTON)
)
)
 Charleston County School District)
 Plaintiff,)
)
 v.)
)
 Robert W. Harrell, Jr., in his official)
 capacity as Speaker of the)
 S. C. House of Representatives,)
 Andre Bauer in his official capacity)
 as President of the S. C. Senate, and)
 Mark Sanford in his official capacity)
 as Governor of the)
 State of South Carolina,)
 Defendants.)

In the Court of Common Pleas
 Ninth Judicial Circuit
 Case No.: _____

COMPLAINT
(Declaratory Judgment Action)
(Non-Jury)

FILED
 2009 MAR -6 PM 12:18
 JULIE J. ARMSTRONG
 CLERK OF COURT

Plaintiff, complaining of the above-named defendants, in their respective official capacities, respectfully show unto this Honorable Court that:

1. Plaintiff is a public school district and political subdivision of the State of South Carolina, organized under the laws of the State of South Carolina and located in Charleston County, South Carolina.
2. Defendant Robert W. Harrell, Jr. is named in his official capacity as Speaker of the S.C. House of Representatives.
3. Defendant Andre Bauer is named in his official capacity as President of the S.C. Senate.
4. Defendant Mark Sanford is named in his official capacity as Governor of the State of South Carolina.
5. This Honorable Court has personal jurisdiction over these defendants in their official capacities.
6. This Court has subject matter jurisdiction over a question of the constitutionality of a state law.
7. Venue is proper under S.C. Code Ann. §15-77-50 (Law. Co-op 2004).

14. Section 59-40-140(I) expressly states that a charter school may acquire facilities by “gift, devise, purchase, lease, sublease, installment purchase agreement, land contract, option, or by any other means”

15. The Charleston County School District (hereinafter “CCSD”) currently sponsors eight (8) charter schools.

16. As of this filing, Drayton Hall Charter Elementary School, Inc. is appealing the decision of the CCSD Board of Trustees to deny its application for conversion to become the ninth charter school in the CCSD system.

ACT 189 OF 2005

16. In 2005 the Charleston County Legislative Delegation presented for approval, by the South Carolina General Assembly, Act 189, which amended Act 340 of 1967, as last amended by Act 128 of 2003.

17. Act 189 of 2005 (hereinafter “Act 189”) was adopted by the legislature.

18. Act 189 was signed by Governor Mark Sanford on May 3, 2005

19. Act 189 states:

SECTION 1. Act 340 of 1967, as last amended by Act 128 of 2003, is further amended by adding:

Section 5A. (A) The Charleston County School District may not deny a charter school, charter school teacher, or charter school student anything that is otherwise available to a public school, public school teacher, or public school student including, but not limited to, the provisions in subsection (B).

(B)(1) The local school district of a charter school in Charleston County may not charge rent to a charter school that was converted from an existing public school.

(2) A charter school in Charleston County may apply for a grant on its own.

(3) A teacher in a charter school in Charleston County may be nominated and considered as a candidate for Teacher of the Year.

(4) A student at a charter school in Charleston County may receive a Laura Brown Fund Grant if the student otherwise qualifies for the grant.”

Act 189 of 2005.

ACT 189 IS UNCONSTITUTIONAL

20. Where a general law has addressed a matter, or where a general law can be made applicable, such a matter is an inappropriate subject for special legislation. Act 189 is special legislation in violation of S.C. Const. Article III, §34,

charging rent to conversion charter schools, when the charter schools law does, or at a minimum could, address these issues, renders Act 189 unconstitutional.

31. Under the cloud of Act 189, Charleston County School District has already entered into agreements to provide rent-free facilities to other charter schools.

32. As noted, CCSD has before it an application for a new conversion charter school. There is every chance that this school, Drayton Hall Elementary School, if ultimately approved for charter status, could place a similar demand on CCSD through enforcement of Act 189.

33. CCSD requires a swift determination that Act 189 be struck down as unconstitutional.

DECLARATORY JUDGMENT

Act 189 is special legislation in violation of S.C. Const. Article III, §34, IX

34. The foregoing assertions are repeated herein as if set forth verbatim.

35. This action for declaratory judgment is filed pursuant to the Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10 *et seq.* (Law. Co-op 2004).

36. Charter schools operate under the auspices of the South Carolina Charter Schools Act of 1996, a general law.

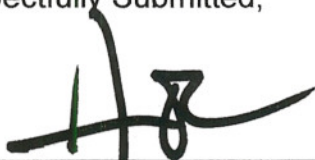
37. Act 189 is special legislation about a topic that is already comprehensively addressed in the South Carolina Charter School Law of 1996, S.C. Code Ann. § 59-25-110 *et seq.* To the extent an aspect of charter school law has not been directly addressed in the general law, the charter school law could certainly be made applicable to any matter associated with charter schools. S.C. Const. Art. III, § 34 (IX). Act 189 purports to modify and amend the general laws of the state.

38. Although Article XI of the S.C. Constitution has been found to create a broad exception to the prohibition against special legislation as it relates to public education, those exceptions inevitably relate to special legislation that benefits the entire school system and not a small segment of the system. Act 189 does not benefit Charleston County as a whole, or even the Charleston County School District. It only benefits a small segment of the schools in Charleston County. There is no logical reason nor are there “peculiar local conditions” to justify singling out charter schools in this respect. *Horry Co. v. Horry Co. Higher Ed. Comm.*, 306 S.C. 416, 412 S.E.2d 421 (1991)(striking down local legislation benefiting only two schools); See also *Duke Power Co. v. S.C. Public Service Comm.*, 284 S.C. 81, 326 S.E.2d 395 (1985).

WHEREFORE, Plaintiff, the Charleston County School District prays this Court take jurisdiction over the parties and this claim and render a declaratory judgment ordering that:

- a) Act 189 of 2005 be struck down as unconstitutional; and
- b) Plaintiff be awarded attorneys' fees, costs, and disbursements of this action and any further relief this Court may deem just and proper.

Respectfully Submitted,



John F. Emerson
General Counsel
Charleston County School District
75 Calhoun Street,
Charleston, SC 29401
Telephone: (843) 937-6515
Facsimile: (843) 937-6546
Email Address – john_emerson@charleston.k12.sc.us

Attorney for Plaintiff
Charleston County School District

March 6, 2009