IN THE CHANCERY COURT OF HINDS COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT

CHARLES ARAUJO, *ET AL.* **PLAINTIFFS**

V. **CAUSE NO. 25CH1:16-cv-001008**

GOVERNOR PHIL BRYANT, *ET AL.* **DEFENDANTS**

PLAINTIFFS' RESPONSE IN OPPOSITION TO MISSISSIPPI CHARTER SCHOOLS ASSOCIATION'S CROSS-MOTION FOR SUMMARY JUDGMENT

The Mississippi Charter Schools Association (hereinafter "the Association") offers a defense of the Charter Schools Act that directly conflicts with Mississippi Supreme Court precedent. Additionally, the Association prophesizes doom for a number of non-traditional public schools if this Court strikes down the CSA's unconstitutional funding provision.

The Association's legal arguments are incorrect, its interpretation of Mississippi Supreme Court cases is inaccurate, and its fears of non-traditional schools falling like dominoes lack any legal foundation. For these reasons, the Association's cross-motion for summary judgment must be denied.[1]

I. Section 206 Allows *Ad Valorem* Tax Revenue to Be Used Only By the Levying School District. Any Other Use of *Ad Valorem* Revenue is Unconstitutional.

Section 206 of the Mississippi Constitution provides that, in addition to state government's support of public schools, "[a]ny county or separate school district may levy an additional tax, as prescribed by general law, to maintain its schools." In *Pascagoula School District v. Tucker*, the Mississippi Supreme Court held that revenue

[1] Defendant-Intervenor Mississippi Charter Schools Association's Cross-Motion for Summary Judgment [Docket No. 46].

from a school district's *ad valorem* taxes can be used for only one purpose: maintaining its schools.[2]

The Association offers a reading of Section 206 in patent conflict with *Tucker*. The Association argues that Section 206 permits sending *ad valorem* revenue to any school, so long as that school is attended by students living within the geographic boundaries of the tax-levying school district.[3] *Tucker* provides no basis for such an interpretation. At no point did the *Tucker* Court discuss geographic boundaries of school districts. Instead, *Tucker* focused on school districts in their capacities as taxing entities. *Tucker* made clear that *ad valorem* revenue can only maintain the schools under the levying school district's control.

Therefore, the Association's argument fails for two reasons. First, the Association's reading of *Tucker* defies the decision's central holding. Second, even if *Tucker* could be interpreted to mean that *ad valorem* revenue simply cannot leave the school district, the CSA still would be unconstitutional because the law explicitly states that charter schools are separate, stand-alone school districts.

A. Section 206 Only Allows a Levying School District's Taxes to Be Used to Maintain Its Schools.

The Association claims that Section 206 allows a school district to send *ad valorem* revenue to any school – even a school outside its control – so long as that school falls within the district's geographic boundaries. This defies the Supreme Court's recent decision that "Section 206 clearly states that the purpose of the tax is to maintain the levying school district's schools."[4]

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[2] *Pascagoula Sch. Dist. v. Tucker*, 91 So. 3d 598, 604 (Miss. 2012).
[3] Defendant-Intervenor Mississippi Charter Schools Association's Memorandum in Support of Cross-Motion for Summary Judgment [Docket No. 48] (hereinafter "MCSA Brief") at 9.
[4] *Tucker*, 91 So. 3d at 605.

The Association's interpretation not only runs afoul of *Tucker*'s central holding; it directly conflicts with *Tucker*'s opening paragraph.

In *Tucker*, a statute required the Pascagoula School District to share its *ad valorem* revenue with the rest of Jackson County's school districts.[5] A group of plaintiffs challenged the law's constitutionality. In the *Tucker* decision's opening paragraph, the Supreme Court agreed that "the contested statute violates the constitutional mandate that a school district's taxes be used to maintain 'its schools.'"[6]

The *Tucker* Court explained that Section 206 defines the limits of a levying school district's taxing power. Section 206 "is *the* enabling authority for a school district's ad valorem taxation power in this state."[7] Without Section 206, a school district's power to levy *ad valorem* taxes would not exist; with Section 206 come the limits it imposes on that power. And the *Tucker* Court defined those limits unambiguously:

> The plain language of Section 206 grants [the Pascagoula School District] the authority to levy an ad valorem tax and mandates that the revenue collected be used to maintain only its schools. Conversely, no such authority is given for the PSD to levy an ad valorem tax to maintain schools outside its district.[8]

More to the point, the *Tucker* Court explained that Section 206 vests control over *ad valorem* revenue solely with the levying school district: "The Legislature has no authority to mandate how the funds are distributed, as Section 206 clearly states that the purpose of the tax is to maintain the levying school district's schools."[9]

At no point in *Tucker* did the Court describe school districts as geographic areas. The word "geographic" does not even appear in the opinion. Instead, the Court

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[5] *Id.* at 600-01.
[6] *Id.* at 600.
[7] *Id.* at 604.
[8] *Id.*
[9] *Id.* at 605.

described school districts as tax-levying authorities, and it placed firm limits on that taxing power. Contrary to the Association's suggestions, those limits are not flexible. They are rigid, and they are singular: "*the purpose of the tax is to maintain the levying school district's schools.*"[10] Any other use of a school district's *ad valorem* revenue – including sharing that revenue with charter schools -- is unconstitutional.

In this case, three facts are indisputable: (1) the tax levying school district is the Jackson Public School District; (2) charter schools are separate, standalone school districts; and (3) charter schools are not "the levying school district's schools." The CSA plainly violates Section 206.

B. The Association Claims That the Legislature's Broad Authority Over School Finance Allows It to Violate Section 206. The *Tucker* Court Rejected That Argument.

The Association argues that Section 201 of the Mississippi Constitution permits the Legislature to violate Section 206.[11] Specifically, the Association argues that the Legislature's broad authority under Section 201 of the Mississippi Constitution allows it to control a school district's *ad valorem* revenue, regardless of what Section 206 says. Ironically, the *Tucker* defendants raised the same argument. It failed then, and it must fail now.

The *Tucker* Court held that Section 201 only "means that the Legislature is to establish, through general law, the *method* by which a 'county or separate school district may levy an additional tax.' No doubt Section 201 grants the Legislature broad power to

[10] *Id.*

[11] MCSA Brief at 9 ("The Mississippi Legislature is fully empowered to enact such a statutory provision under the broad power conferred by Section 201 of the Mississippi Constitution . . . ."). *See also* Miss. Const. art. VIII, § 201 ("The Legislature shall, by general law, provide for the establishment, maintenance, and support of free public schools upon such conditions and limitations as the Legislature may prescribe.").

regulate school finance, but it must be read in conjunction with Section 206."[12] As the *Tucker* Court explained, accepting the defendants' argument would have allowed the Legislature to dictate how school districts spent their *ad valorem* revenue, and "Section 206 would be rendered a complete nullity."[13]

The Supreme Court rejected that outcome and applied "[t]he plain language of Section 206."[14] Under that plain language, *ad valorem* revenue must be used only by the school district that levied the tax. The Legislature has no power to order levying school districts how to spend their *ad valorem* revenue. Here, the levying school district is JPS, and charter schools are not "the levying school district's schools." Requiring JPS to redirect its *ad valorem* revenue to charter schools violates Section 206.

C. The Association's Parade of Horribles About Non-Traditional Schools is Intended to Distract the Court.

Instead of acknowledging that its position directly conflicts with *Tucker*, the Association argues that upholding Section 206 in this case would be cataclysmic to non-traditional schools in Mississippi. This is absurd. The sky did not fall on these schools after *Tucker* was decided, and it will not fall now.

a. The Mississippi School for Math and Science and the Mississippi School of the Arts Do Not Receive *Ad Valorem* Revenue.

The Mississippi School for Math and Science and the Mississippi School of the Arts do not violate Section 206 because they do not receive *ad valorem* tax revenue.[15]

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[12] *Tucker*, 91 So. 3d at 605 (quoting Miss. Const. art. VIII, § 206) (emphasis in original).
[13] *Tucker*, 91 So. 3d at 605.
[14] *Id.* at 604.
[15] *See* Miss. Code. Ann. § 37-139-13 (MSMS funded by state treasury); Miss. Code. Ann. § 37-140-13 (MSA funded by state treasury). *See also* Bracey Harris, *The Clarion-Ledger*, "Mississippi School for Math and Science Cuts Enrollment, Cites Funding" (June 2, 2016), *available at* http://www.clarionledger.com/story/news/2016/06/01/school-math-and-science-cuts-enrollment-citing-funding/85191634 (last viewed Aug. 24, 2016) (noting that MSMS, MSA, and the schools for the

Since no school district is required to redirect *ad valorem* revenue to them, Section 206 is inapplicable to these schools.

b. The Statutes that Fund Agriculture Schools and Alternative Schools are Not Facially Unconstitutional. Unlike the CSA, These Statutes Do Not Require the Expenditure of *Ad Valorem* Revenue.

Unlike the CSA and the statute at issue in *Tucker*, the statutes calling for local funds to follow students attending agriculture schools and alternative schools do not require diversion of *ad valorem* taxes.[16] For out-of-county students attending agricultural high schools, county school funds – not *ad valorem* revenue – are used to pay for the child's education. For out-of-district students attending alternative schools, funds made available to the district for alternative schools or local district maintenance funds may be used to pay for the child's education. Local school districts are not required to use *ad valorem* funds to pay for out-of-district students attending an alternative school located in the district. Therefore, this statute is not facially unconstitutional.

c. Conservatorships Do Not Eradicate Local Oversight. They Simply Replace the Local Officials.

Neither conservatorships nor the Mississippi Recovery School District offend Section 206. Schools under conservatorship continue to use their *ad valorem* revenue for their own maintenance. School districts under conservatorship are not required to

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deaf and blind "do not have an ad valorem tax base to draw funds from and are therefore excluded from the [Mississippi Adequate Education Program] formula").

[16] *See* Miss. Code. Ann. § 37-27-61 (emphasis added) ("The county superintendent of education of a county which does not alone or in conjunction with another county maintain an agricultural high school or an agricultural high school-junior college, may provide, with the approval of the county board of education and the board of supervisors, for the attendance of pupils residing in the county of which he is superintendent of education, at an agricultural high school or an agricultural high school-junior college located in a county adjoining thereto, and pay by certificate drawn by him on the county school funds for the instruction of such pupils."); *See* MISS. CODE. ANN. § 37-13-92(6) (emphasis added) ("the expense of establishing, maintaining and operating such alternative school program may be paid from funds contributed or otherwise made available to the school district for such purpose or from local district maintenance funds.

send their *ad valorem* revenue to schools outside their control. Therefore, no Section 206 problem arises.

Likewise, the Mississippi Recovery School District operates as the formal name for oversight of individual conservatorships.[17] Therefore, it satisfies Section 206 for the reasons described above.

d. The Law Governing Transfer Students Is Not Facially Unconstitutional. Unlike the CSA, This Statute Does Not Require the Expenditure of *Ad Valorem* Revenue.

Mississippi law permits students to transfer to an adjacent school district "if the respective districts agree to the transfer."[18] Therefore, a student may only transfer to an out-of-district school if the sending district and the receiving district permit the transfer. If both districts agree, the sending-district sends *ad valorem* funds to the receiving-district. This process is completely discretionary for both districts.

In stark contrast to the CSA (which is mandatory, not discretionary), the transfer statute does not require districts to spend *ad valorem* funds on schools that are not "its" schools. For this reason, unlike the CSA, the transfer statute is not unconstitutional on its face.

II. Section 208 of the Mississippi Constitution Forbids Sending State School Funds to Schools Outside the Dual Supervision of the State Superintendent and a Local District Superintendent.

Article VIII of the Mississippi Constitution requires the establishment of a system of free public schools and provides guidelines for those schools' funding and

[17] *See* Miss. Code Ann. § 37-17-6 ("The Mississippi Recovery School District shall provide leadership and oversight of all school districts that are subject to state conservatorship.")

[18] Miss. Code. Ann. § 37-15-31(5)(a) ("If the board of trustees of a municipal separate school district with added territory does not have a member who is a resident of the added territory outside the corporate limits, upon the petition in writing of any parent or legal guardian of a school-age child who is a resident of the added territory outside the corporate limits, the board of trustees of the municipal separate school district and the school board of the school district adjacent to the added territory shall consent to the transfer of the child from the municipal separate school district to the adjacent school district.")

governance. Chief among those guidelines is Section 208, which forbids providing state school funds to any school outside the system contemplated by the Constitution.[19]

Through the years, some provisions of Article VIII have been revised from time to time. But for nearly 140 years, the fundamental requirements for schools within that system have been clear: they must be "under the general supervision of the State superintendent and the local supervision of the [district] superintendent, are free from all sectarian religious control, and ever open to all children within the ages of five and twenty-one years."[20]

Charter schools lack this mandatory supervision. They are not overseen by the state superintendent, by the State Board of Education, by the Mississippi Department of Education,[21] or by any local district superintendent.[22] Nevertheless, the CSA's "state stream" requires the Mississippi Department of Education to send state school funds to charter schools from the Mississippi Adequate Education Program. Sending state school funds to schools that are not under the general supervision of the State superintendent and the local superintendent violates Section 208.

Despite this longstanding restriction on spending state school funds, the Association offers four arguments related to Section 208. First, the Association argues

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[19] Miss. Const. art. VIII, § 208 ("No religious or other sect or sects shall ever control any part of the school or other educational funds of this state; nor shall any funds be appropriated toward the support of any sectarian school, or to any school that at the time of receiving such appropriation is not conducted as a free school.").

[20] *Otken v. Lamkin*, 56 Miss. 758, 764 (1879).

[21] Miss. Code Ann. § 37-28-45(5) ("A charter school is not subject to any rule, regulation, policy or procedure adopted by the State Board of Education or the State Department of Education unless otherwise required by the authorizer or in the charter contract.").

[22] Miss. Code Ann. § 37-28-45(3) ("Although a charter school is geographically located within the boundaries of a particular school district and enrolls students who reside within the school district, the charter school may not be considered a school within that district under the purview of the school district's school board. The rules, regulations, policies and procedures established by the school board for the noncharter public schools that are in the school district in which the charter school is geographically located do not apply to the charter school unless otherwise required under the charter contract or any contract entered into between the charter school governing board and the local school board.").

that Section 201 permits the Legislature to violate Section 208. Second, the Association claims that the Supreme Court's dual-supervision requirement did not survive the enactment of the Constitution of 1890. Third, the Association believes that the dual-supervision requirement did not survive a 1960 constitutional amendment. Fourth, the Association insists that upholding long-established Supreme Court decisions will trigger doomsday for non-traditional schools like the School for Math and Science and the School of the Arts.

Each of the Association's arguments fails. The Constitution's dual-supervision requirement has existed for more than 100 years and continues today. This longstanding commitment to local and state oversight has never limited the Legislature's establishment of specialty schools, and it will not do so now.

A. Section 201 Does Not Allow the Legislature to Avoid the Limitations of Section 208.

No provision of the Constitution is more important than any other provision. Sections of the Constitution must be read in harmony with one another.[23] Nevertheless, the Association argues that the Legislature's power under Section 201 is more important than the Plaintiffs' rights under Section 208. The Association is incorrect. Although Section 201 grants the Legislature broad authority over school finance, that authority ends where Section 208 begins.

Again, *Tucker* is instructive. In *Tucker*, plaintiffs challenged a statute that required the Pascagoula School District to share its *ad valorem* revenue with schools that were not within the levying school district. The plaintiffs argued that the statute violated Section 206 of the Constitution, which only allows a school district to spend *ad*

[23] *Van Slyke v. Bd. of Trustees of State Institutions of Higher Learning*, 613 So. 2d 872, 876 (Miss. 1993) ("[P]rovisions of the constitution should be read so that each is given a maximum effect and a meaning in harmony with that of each other.") (quotation omitted).

valorem revenue on "its schools." In defense, the State argued (as the Association does now) that Section 201 allowed the Legislature to spend school funds however it wanted.[24]

The Supreme Court disagreed. "No doubt Section 201 grants the Legislature broad power to regulate school finance," the Court wrote, "but it must be read in conjunction with Section 206. The Legislature's plenary power does not include the power to enact a statute that – on its face – directly conflicts with a provision of our Constitution."[25]

The same is true here. The Legislature's power under Section 201 does not allow it to violate Section 208. And under Section 208, state school funds cannot be sent to any school outside the dual supervision of the state superintendent and a local district superintendent. The CSA provides otherwise, and therefore, it is unconstitutional.

B. The Requirements of Section 208 are the Same as When It was Enacted in 1890.

When the Supreme Court decided *Otken v. Lamkin* in 1879, it held that every school within the Mississippi Constitution's system of public schools must be overseen by both the state superintendent and a local district superintendent.[26] More than 40 years later, in *State Teachers' College v. Morris*, the Supreme Court reaffirmed this rule.[27] Neither decision has ever been overturned, and Section 208 has never been amended.

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[24] *Tucker*, 91 So. 3d at 605 ("The defendants . . . urge this Court to hold that [the statute] is a legitimate exercise of the Legislature's plenary power under Article 8, Section 201 of the Mississippi Constitution . . . .").
[25] *Id.* at 605.
[26] *Otken v. Lamkin*, 56 Miss. 758, 764 (1879) ("[N]o portion of the school fund can be diverted to the support of schools which, in their organization and conduct, contravene the general scheme prescribed. That is to say, the fund must be applied to such schools only as come within the uniform system devised, and under the general supervision of the State superintendent and the county superintendent.").
[27] *State Teachers' College v. Morris*, 165 Miss. 758, 144 So. 374, 376 (1932).

Nevertheless, the Association argues that Section 208 no longer forbids sending state school funds to schools outside the dual supervision of the state superintendent and a local district superintendent. According to the Association, the 1960 amendment to Section 201 changed Section 208 as well. The Association is legally incorrect.

When *Otken* was decided in 1879, and when *Morris* was decided in 1932, Section 201 required that Mississippi's public school system be "uniform."[28] That requirement was eliminated from the Mississippi Constitution in 1960. In the Association's view, amendments to Section 201 have somehow changed Section 208. More specifically, the Association argues, the dual-supervision requirement no longer exists because Section 201 no longer requires a "uniform" system of public schools.[29]

But the Association misunderstands the term "uniform" in the education context. Uniformity in a school system has nothing to do with its governance; it is a requirement of educational quality, not bureaucracy. A leading legal encyclopedia explains that when a state constitution calls for a "uniform" system of public schools, the term "means that every child shall have the same advantages and be subject to the same discipline as every other child. In some jurisdictions, it is said that 'uniform' refers to curriculum and not funding."[30]

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[28] *See* Miss. Const. art. VIII, § 201 (1890) ("It shall be the duty of the legislature to encourage by all suitable means, the promotion of intellectual, scientific, moral and agricultural improvement, by establishing a uniform system of free public schools, by taxation, or otherwise, for all children between the ages of five and twenty-one years, and, as soon as practicable, to establish schools of higher grade.").

[29] MCSA Brief at 13.

[30] 67B Am. Jur. 2d Schools § 10; *See, e.g.*, *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973) (discussing the need for innovative thinking and funding "to assure both a higher level of quality and greater uniformity of opportunity" in public education); *Lobato v. State*, 304 P.3d 1132 (Colo. 2013) (holding that the phrase "thorough and uniform" in the Education Clause describes a free public school system that is of a quality marked by completeness, is comprehensive, and is consistent across the state); *Coalition for Adequacy v. Chiles*, 680 So.2d 400 (Fla. 1996) ("uniformity" means that a system be provided that gives every student an equal chance to achieve basic educational goals prescribed by the legislature).

For example, North Carolina's state constitution still requires that its public schools be "uniform."[31] The North Carolina Supreme Court has explained that this requirement demands "that every child have a fundamental right to a sound basic education which would prepare the child to participate fully in society."[32] Similarly, the Kentucky Supreme Court has held that its state's public schools must be "substantially uniform," meaning that "[e]ach child, every child, in this Commonwealth must be provided with an equal opportunity to have an adequate education."[33]

Removing the word "uniform" from Section 201 simply gave the Legislature discretion over the quality of public schools. It had absolutely no effect on those schools' governance.

Both *Otken* and *Morris* underscore this point. *Otken* explained that state school funds "must be applied to such schools only as come within the uniform system devised, *and* under the general supervision of the State superintendent and the local supervision of the county superintendent."[34] The Court's use of the word "and" demonstrates that the uniformity requirement and the dual-supervision requirement were two different, unrelated requirements.

Likewise, the *Morris* Court explained: "In order for a school to be within the system of *free schools* required by section 201 of the Constitution, the establishment and control thereof must be vested in the public officials charged with the duty of establishing and supervising that system of schools."[35] This demonstrates that the dual-

[31] N.C. Const., art. IX, § 2(1).
[32] *Leandro v. State*, 488 S.E.2d 249, 255 (N.C. 1997).
[33] *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 211 (Ky. 1989).
[34] *Otken v. Lamkin*, 56 Miss. 758, 764 (1879) (emphasis added).
[35] *State Teachers' College v. Morris*, 144 So. 374, 376 (Miss. 1932) (emphasis added).

supervision requirement was essential to the system of "free schools;" uniformity had nothing to do with dual supervision.

In contrast to Section 201, Section 208 has never been amended since its enactment in 1890. It still requires today what it required then: that no state school funding be sent to any school outside the dual supervision of the state superintendent and a local district superintendent.

C. The Holding of *Otken* Has Been the Law for Nearly 140 Years. Reaffirming It Now Will Not Affect the School for Math and Science or the School for the Arts.

With no legal authority supporting its interpretation of Section 208, the Association falls back on its warnings of certain doom if the Constitution is enforced. Specifically, the Association claims that applying Section 208 will implicate the Mississippi School for Math and Science, the Mississippi School for the Arts, and the State's power to bring failing school districts under conservatorship.

Again, the Association is wrong. The School for Math and Science, the School for the Arts, and conservatorships each comply with Section 208.

1. The School for Math and Science and the School for the Arts are "State Owned and Supported Schools." *Morris* Explains that Funding These Schools is Constitutional.

Neither the Mississippi School for Math and Science nor the Mississippi School for the Arts is part of any local school district; therefore, neither is overseen by a district superintendent. Nevertheless, they may receive state funds without offending Section 208.[36]

[36] To be clear, Section 206 would prohibit either from receiving *ad valorem* tax revenue. And indeed, *ad valorem* tax revenue is not allocated to the Mississippi School for Math and Science or to the Mississippi School for the Arts. *Seen supra* at n.15.

The Supreme Court has explained that, despite Section 208, the Legislature may establish "state owned and supported schools" that (1.) are individually contemplated by either the Constitution or statute, (2.) are overseen exclusively at the state level of government, and (3.) receive no *ad valorem* tax revenue. These schools intentionally exist outside the system of "free schools" contemplated by Section 208 and, therefore, are not subject to Section 208's limitations.

This recognition appears most clearly in *State Teachers' College v. Morris*.[37] In that case, a father enrolled his two daughters in a teachers' demonstration and practice school operated by the State Teachers' College. The practice school was established and overseen by the college's administration pursuant to a statute that allowed the state's colleges and universities to open such schools.[38] When the City of Hattiesburg declined to pay the girls' tuition, the school billed the father. He then filed suit under the theory that any school receiving state money must be conducted as a "free school" – i.e., free of tuition.[39]

On appeal, the Mississippi Supreme Court rejected that theory. The Court explained that Section 201 of the Constitution required establishment of a system of public schools, but it did not preclude the intentional establishment of schools outside

[37] *State Teachers' College v. Morris*, 165 Miss. 758, 144 So. 374 (1932).
[38] *See id.* at 375 ("A part of [State Teachers' College's] activities include the operation of a teachers' demonstration and practice school established by it under the provisions of section 7241-7246, Code 1930."); Miss. Code of 1930 § 7241 ("The right and authority is hereby recognized and conferred upon the respective administrative authorities of the major state institutions of learning in Mississippi to operate, maintain and conduct teachers' demonstration and practice schools in connection with such institutions. In conducting the affairs of such teachers' demonstration or practice schools, power is hereby conferred upon the authorities aforesaid to lawfully regulate the affairs of such schools. The aforesaid authorities in co-operation with and having the approval of the board of trustees of any of the respective school districts so co-operating and/or the county superintendent of education and/or county school board as the case may be shall determine what grade, or grades, or parts of grades of said districts, from which such students may be admitted.").
[39] *Id.* at 375-76.

that system.[40] For example, the Court pointed to the Legislature's creation of colleges and universities, which charged tuition and were not "free schools."[41] On that basis, the Court concluded that the Constitution's drafters "did not have state owned and supported schools, including the State's University and colleges, in mind, and that it was no part of its purpose to interfere with the Legislature's power over them."[42]

Notably, the *Morris* Court did not hold that colleges and universities were the only schools outside the scope of Section 208. Instead, the Court explained that the group of schools outside the coverage of Section 208 "*includ[ed]* the State's University and colleges."[43] Clearly, the *Morris* Court envisioned that some K-12 schools – such as the practice and demonstration school – might also fall outside the scope of Section 208.

The practice school in *Morris* had several characteristics that intentionally removed it from the system of free schools covered by Section 208. First, the school was overseen exclusively by officials at the state level of government – specifically, the State Teachers' College administration.[44] Second, the school was not entitled to *ad valorem* tax revenue.[45] Third, the school was contemplated individually by statute.[46]

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[40] *Id.* 376-77. Section 201 has since been amended, but like the version in effect in 1932, Section 201 still requires establishment of a system of public schools. *See* Miss. Const. art 8 § 201 ("The Legislature shall, by general law, provide for the establishment, maintenance and support of free public schools upon such conditions and limitations as the Legislature may prescribe.").
[41] *Id.* at 379.
[42] *Id.*
[43] *Id.* (emphasis added).
[44] *Id.* ("The right and authority is hereby recognized and conferred upon the respective administrative authorities of the major state institutions of learning in Mississippi to operate, maintain and conduct teachers' demonstration and practice schools in connection with such institutions.").
[45] Miss. Code of 1930 §7242 (conditioning payment of public funds to practice schools upon approval of local public school officials); Miss. Code of 1930 §7243 (granting permission for practice schools to charge tuition if local school authorities do not provide funding). *See also Morris*, 144 So. at 375 (school billed students' father for tuition after City of Hattiesburg refused to pay).
[46] Miss. Code of 1930 §7241 (authority to establish practice schools granted only to individual institutions of higher learning).

Similarly, the Mississippi School for Math and Science and the Mississippi School for the Arts are (1) individually contemplated by statute;[47] (2) overseen exclusively by the State Board of Education;[48] and (3) receive no *ad valorem* tax revenue.[49] Like the practice school at issue in *Morris*, the Mississippi School for Math and Science and the Mississippi School for the Arts were intentionally created to be outside the existing system of free public schools and are governed and funded accordingly. Thus, these schools do not contradict Section 208.

Charter schools satisfy none of the three characteristics of the "state owned and supported schools" in *Morris*. They are not individually contemplated by statute; they are overseen by private organizations instead of state government officials; and they receive *ad valorem* revenue. Unlike the Mississippi School of Math and Science and the Mississippi School of the Arts, charter schools are *not* overseen by the State Board of Education.[50] Further, charter schools are funded, in part, by the diversion of *ad valorem* tax receipts from the school district within which they are geographically located.[51] Charter schools do not fit *Morris*' "state owned and supported schools" exception to Section 208.

As with the practice school in *Morris*, state-owned and supported schools such as the Mississippi School for Math and Science are eligible for state funding. Applying

[47] Miss. Code Ann. § 37-139-1, *et seq.* (creating Mississippi School for Math and Science); Miss. Code Ann. § 37-140-1, *et seq.* (creating Mississippi School for the Arts).
[48] Miss. Code Ann. § 37-139-3(2) (MSMS "shall be governed by the State Board of Education"); Miss. Code Ann. § 37-140-5(1) (MSA "shall be governed by State Board of Education").
[49] Miss. Const. art 8 § 206 (*ad valorem* tax revenue only available to schools of the levying district). *See also* Bracey Harris, *The Clarion-Ledger*, "Mississippi School for Math and Science Cuts Enrollment, Cites Funding" (June 2, 2016), *available at* http://www.clarionledger.com/story/news/2016/06/01/school-math-and-science-cuts-enrollment-citing-funding/85191634 (last viewed Aug. 24, 2016) (noting that MSMS, MSA, and the schools for the deaf and blind "do not have an ad valorem tax base to draw funds from and are therefore excluded from the [Mississippi Adequate Education Program] formula").
[50] Miss. Code § 37-28-45(5) ("A charter school is not subject to any rule, regulation, policy or procedure adopted by the State Board of Education or the State Department of Education unless otherwise required by the authorizer or in the charter contract.").
[51] Miss. Code § 37-28-55(2).

Section 208 to the CSA will have no effect on the School for the Arts or the School for Math and Science.

2. In a Conservatorship, the State Does Not Eliminate a District's Local Oversight. It Simply Replaces the Officials Performing that Oversight.

The Association also argues that reaffirming the dual-supervision requirement would make school conservatorships impossible. That is incorrect.

A conservatorship is, by definition, a temporary remedy to address a "state of emergency in a school district."[52] When the State "takes over" a failing school district and places it under conservatorship, the conservator becomes "responsible for the administration, management and operation of the school district."[53] Accordingly, the conservator steps into the shoes of the local education agency and assumes responsibility for *every* aspect of local oversight over the school district.[54]

Because the school is still part of state system of free public schools, the State Board of Education continues to exercise oversight over the school as well. Again, this remedy is only temporary, since the conservatorship will cease when the state of emergency no longer exists.

Charter schools, in contrast, are not under the oversight of the local superintendent or the state board at any time, even in a state of emergency. Unlike a local school board or a conservator, the Charter Authorizer Board does not attend all meetings of Midtown Charter's board and administrative staff; supervise the day-to-day activities of Midtown Charter's staff; or appoint a parent advisory committee. The Authorizer Board does not approve Midtown Charter's checks, ratify its employment

[52] Miss. Code § 37-17-6(15)(a).
[53] Miss. Code Ann. § 37-17-6(15)(a).
[54] *Alexander v. Reeves*, 90 So. 3d 1273, 1278 (Miss. Ct. App. 2012) ("the conservator acts, for all intents and purposes, as the school board.").

contracts, or approve its financial obligations. Moreover, unlike a conservatorship, the Authorizer Board is not a temporary remedy during a state of emergency.

In sum, a conservatorship does not eliminate local oversight over a district during a state of emergency; it merely replaces the officials responsible for performing that oversight. Since local oversight remains in place, a conservatorship does not change the fact that the district's schools are correctly characterized as "free schools" pursuant to Section 208. In contrast, a charter school has no local or state oversight, whether in a state of emergency or not.

III. Conclusion.

The Association's arguments are contradicted not only by Mississippi Supreme Court precedent but also by history. For nearly 140 years, *Otken* and *Morris* have required that a school receiving state school funding must be overseen by the state superintendent and a local district superintendent. *Tucker* is equally clear that the Legislature has no power to order local school districts how to spend their *ad valorem* revenue or to compel them to share the revenue with other schools.

In the years that have passed since those decisions became law, the sky has not fallen. Reaffirming those decisions now will have no different result.

The Association's motion for summary judgment must be denied.

RESPECTFULLY SUBMITTED this Twenty-Seventh day of February 2017.

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CERTIFICATE OF SERVICE

I, Will Bardwell, hereby certify that, simultaneously with its filing, a copy of the foregoing Response was served on all counsel of record via the Court's MEC electronic filing system.

SO CERTIFIED this Twenty-Seventh day of February 2017.

/s/ *Will Bardwell*
Will Bardwell