

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

DEKALB COUNTY SCHOOL
DISTRICT,

Petitioner,

v.

CITY OF ATLANTA and FELICIA A.
MOORE, ATLANTA CITY COUNCIL
PRESIDENT, in her Official Capacity,

Respondents.

CIVIL ACTION FILE

No. _____

**PETITION FOR DECLARATORY JUDGMENT, INJUNCTIVE RELIEF AND
ISSUANCE OF A WRIT OF MANDAMUS**

Petitioner DeKalb County School District (“DCSD”) files this Petition for Declaratory Judgment, Injunctive Relief and Issuance of a Writ of Mandamus against the City of Atlanta (the “City”) and the City Council President stating as follows:

SUMMARY OF PETITION

1.

DCSD seeks a declaratory judgment pursuant to O.G.G.A. § 9-4-1 *et seq.* declaring that Atlanta Ordinance 17-O-1420 (“Ord. 17-O-1420”), which annexed 744 acres located within DeKalb County along the City’s eastern edge, absorbing (among other things) Emory University, the Centers for Disease Control and Prevention, and Children’s Healthcare of Atlanta (the “Emory Annexation”), is void *ab initio* under O.C.G.A. § 36-35-3(a) because its means of passage violated the procedural rules set

forth in § 2-402(c) of the Atlanta City Charter.

2.

DCSD also seeks injunctive relief requiring that the City halt implementation and enforcement of the provisions of Ord. 17-O-1420 that require effected public school students within the Emory Annexation to enroll in the Atlanta Independent School District (“APS”) school system by July 1, 2018.

3.

DCSD also seeks the issuance of mandamus relief requiring the Atlanta City Council to declare Ord. 17-O-1420 void.

Parties, Jurisdiction, and Venue

4.

Petitioner DCSD is a political subdivision of the State of Georgia acting by and through the State of Georgia.

5.

City of Atlanta is a municipal corporation and political subdivision of the State of Georgia, acting through its Mayor and City Council as its governing authority. The City is subject to the jurisdiction of this Court and may be served with process through Mayor Keisha Lance Bottoms at the Executive Offices of the City of Atlanta, 55 Trinity Avenue, Atlanta, Georgia 30303.

6.

Respondent Felicia A. Moore is the sitting Atlanta City Council President (“Moore”). Pursuant to § 2-203, the City Council President is responsible for presiding over meetings and votes of the City Council and ensuring the passage of all ordinances complies with all legal requirements. Moore may be served with process at the offices of the City Council, Atlanta City Hall, 55 Trinity Ave, S.W., Second Floor East, Atlanta, GA 30303-3584.

7.

Venue is proper in the Superior Court of Fulton County, because the City of Atlanta is in Fulton County, and the Court has general subject matter jurisdiction over the claims asserted by DCSD.

FACTS

Operation and Funding of DCSD

8.

DCSD is Georgia’s third largest school system. The District serves nearly 102,000 students in 137 schools and centers, and has 15,500 employees.

9.

The DeKalb County Board of Education (“Board”) is the governing body of DCSD and has a constitutional responsibility to manage, operate and fund DCSD.

10.

While DCSD receives a portion of its operational funding from the State of Georgia through the Quality Basic Education Act, it relies on local property taxation generated from the territory within DeKalb County that it serves for the majority of its remaining funding needs

11.

The value of real property located within that portion of DeKalb County that is served by DCSD, and is taxable for education purposes, has a direct and substantial impact on DCSD's ability to operate and maintain the public schools within DCSD.

12.

Unlike those municipalities in DeKalb County that remain under the umbrella of DCSD's management and funding, the City of Atlanta ("City") maintains an independent school system, Atlanta Public Schools ("APS"), which relies on property taxation of the territory it serves for a significant portion of its funding.

13.

APS has an enrollment of approximately 54,000 students, attending a total of 103 schools. It is operated by the Atlanta Board of Education.

14.

Any expansion of APS's school zoning boundaries into areas of DeKalb County annexed by the City decreases the taxable real property base from which DCSD draws a

significant portion of its funding, and impairs its ability to operate and adequately fund DeKalb County Public Schools.

15.

DCSD services nearly twice as many students as APS, but receives proportionally less funding per student than APS.

The Emory Annexation

16.

On August 19, 2016, Emory University (“Emory”) issued a statement announcing that it was “beginning the process to annex its campus into the City of Atlanta.”

17.

Emory filed a formal petition seeking annexation into the City on June 27, 2017. The area of the proposed Emory Annexation included 744 acres located within DeKalb County along the City’s eastern edge made up of, among other properties, Emory, the Centers for Disease Control and Prevention (“CDC”), and Children’s Healthcare of Atlanta (“CHOA”). There were only approximately 7 to 9 public school aged children residing in the area proposed for annexation.

18.

On or about August 1, 2017, the DeKalb County Board of Commissioners (“DCBC”) invoked the arbitration procedures available to it pursuant to O.C.G.A. § 36-36-110 *et seq.* to challenge the Emory Annexation, and/or resolve certain disputes arising

from the annexation proposed on September 26, 2017.

19.

Prior to the formal arbitration, the City and DCBC reached a settlement agreement that purported to allow the annexation to move forward, which was entered into on September 26, 2017.

20.

Throughout this entire process, the City expressly represented to DCSD and the DCBC that the Emory Annexation would not result in the expansion of APS's school zoning boundaries. Accordingly, DCSD not only did not object to the Emory Annexation, but affirmatively supported the annexation since it would not negatively affect DCSD's student population or taxable property base.

**Approval of the Emory Annexation through Invalid Legislation
Voids the Legislation and Annexation**

21.

The Annexation legislation required to implement the Emory Annexation included the passage of an ordinance by the Atlanta City Council ("Council"). Such an ordinance constitutes a permanent rule of government.

22.

Before such an ordinance can be finally approved and adopted, the proposed ordinance must be read by title before the full City Council at two regular meetings. Specifically, Section 2-402(c) of the Atlanta City Charter provides that "no ordinance

shall be passed and adopted until it has been read by title at two regular meetings not less than one week apart.”

23.

The title of the Emory Annexation ordinance initially introduced in the City Council expressly stated that it would “*not extend the boundaries of the Atlanta Independent School System* [APS].” See Exhibit A, [Ordinance 17-O-1420 \(July 5, 2017 version\)](#) (emphasis added.)

24.

Upon information and belief, the title of the Emory Annexation Ordinance that *did not expand* APS’ school boundaries was properly read by title before the City Council at two regular meetings.

25.

On November 29, 2017, however, the City Council Zoning Committee for the very first time introduced and passed a substitute ordinance with a title that expressly *extended the boundaries of APS* to include the entire Emory Annexation. See Exhibit B, [Ordinance 17-O-1420 \(substitute ordinance, November 29, 2017\)](#).

26.

Only five days later, on December 4, 2017, in a move that smacks of backroom political dealing, the City Council voted to approve the substitute ordinance that included the expansion of the APS school boundaries throughout the Emory Annexation.

27.

The substitute ordinance that expanded APS's school zone boundaries *was not read* at two regular meetings more than one week apart as required by Section 2-402(c) of the Atlanta City Charter.

28.

The expansion of APS's school zone boundaries to include the entire Emory Annexation in the substitute ordinance constituted a material change from the original proposed ordinance that required the substitute ordinance to be read twice at regular meetings in order to not violate Section 2-402(a) of the City's Charter.

29.

Section 2-402(a) of the City's Charter requires that the proposed legislation be drafted "to ensure that the public is able to adequately review and understand the intent and effect of the legislation."

30.

The last-minute change of the annexation ordinance to expand APS's school zone boundaries to include the entire Emory Annexation effectively deprived the public of that right to adequately review and understand the intent and effect of the legislation and caused the public to have the misperception that DeKalb County and the DCSD were in favor of the annexation.

31.

This "bait and switch" tactic on the extension of the APS boundaries allowed the

proponents of the annexation to eliminate and any all opposition to annexation by every impacted public body.

32.

Had the ordinance that was actually passed been made public early in the process, DeKalb County and the DCSD would have publicly opposed annexation, which could have greatly impacted its chances for passage.

33.

Under O.C.G.A. § 36-35-3(a), a city council is authorized to adopt only those ordinances “which are not inconsistent with the Constitution or any charter provision applicable thereto.”

34.

“An ordinance enacted in violation of O.C.G.A. § 36-35-3(a) is void.” *Ivey v. McCorkle*, 806 S.E.2d 231, 233 (Ga. Ct. App. 2017); *accord City of Buchanan v. Pope*, 476 S.E.2d 53, 56 (Ga. Ct. App. 1996) (“The Georgia Supreme Court has interpreted [O.C.G.A. § 36-35-3(a)] to invalidate municipal ordinances inconsistent with a city’s charter.” (citing *Ga. Branch, Assoc’d Gen. Contractors of Am., Inc. v. City of Atlanta*, 321 S.E.2d 325, 329 (Ga. 1984))).

35.

The Emory Annexation is the largest expansion of the City’s borders in 65 years, since the annexation of Buckhead in 1952. It brought an additional 6,400 residents into the City as of January 1, 2018, including 7 to 9 school-aged children who had been

enrolled in DCSD.

36.

The real property within the boundaries of the Emory Annexation purportedly became part of the City effective January 1, 2018. The attendant APS expansion to include the annexed area does not become effective until July 1, 2018.

37.

Pursuant to the substitute ordinance, public school age children living in the Emory Annexation are required to register to attend APS schools on or before July 1, 2018 in order to attend public school in Georgia.

38.

DCSD will lose more than \$2,000,000 in funding as a result of the APS unlawful expansion to include the Emory Annexation.

39.

Residents impacted by the invalid passage of the substitute ordinance that allowed the APS expansion into the Emory Annexation have informed DCSD that they desire and intend to continue to enroll their children in DCSD schools.

COUNT I – DECLARATORY JUDGMENT

40.

Paragraphs one through thirty-nine are incorporated by reference as if set forth fully herein.

41.

There exists between the parties an actual controversy relative as to whether ordinance that allowed the expansion of the APS school system throughout the Emory Annexation was validly enacted so as to deprive DCSD of taxable real property available for DCSD school system funding.

42.

Substitute Ord. 17-O-1420, which included the language expanding the APS school zone boundaries, was not read by title in full in two separate regular meetings of the City Council.

43.

The City Council's enactment of Ord. 17-O-1420 violated Section 2-402(a) of the City's Charter.

44.

Ord. 17-O-1420 is therefore void as a matter of law pursuant to O.C.G.A. § 36-35-3(a).

45.

The expansion of the APS school zone boundaries and the requirement that students within the Emory Annexation enroll in APS is therefore void and invalid.

46.

Pursuant to O.C.G.A. § 9-4-1 *et seq.*, Petitioner seeks a declaratory judgment that Ord. 17-O-1420, and the annexation and expansion of APS that the ordinance attempts to

enact, are illegal, void and of no force and effect as a matter of law.

47.

Based on the foregoing, Petitioner has demonstrated an interest in having any ordinance depriving it of taxable real property for its school system operation being properly and duly enacted.

48.

Based on the foregoing, there is an actual controversy under O.C.G.A. § 9-4-2(a) between DSCD and the City such that the Court should issue a declaratory judgment.

49.

DCSD is uncertain and insecure as to its rights, status and other legal obligations with respect to the taxable real property located in and enrollment rights of public school students residing within the Emory Annexation.

50.

Therefore, there is a justiciable controversy under O.C.G.A. § 9-4-2(b) such that the Court should issue a declaratory judgment

COUNT II – INJUNCTIVE RELIEF

51.

Paragraphs one through fifty are incorporated by reference as if set forth fully herein.

52.

Petitioner will suffer immediate and irreparable harm should the provisions of

Ord. 17-O-1420 requiring that public school eligible students living within the Emory Annexation enroll in the APS school system go into effect on July 1, 2018.

53.

Injunctive relief prohibiting the enforcement of the provisions of Ord. 17-O-1420 requiring that public school eligible students living within the Emory Annexation enroll in the APS school on or before July 1, 2018 will maintain the *status quo* pending final adjudication of this matter on the merits.

54.

Based on the foregoing, Petitioner seeks temporary and permanent injunctive relief prohibit Respondent from enforcing the provisions of Ord. 17-O-1420 requiring that public school eligible students living within the Emory Annexation enroll in the APS school on or before July 1, 2018.

COUNT III - MANDAMUS

55.

Paragraphs one through fifty-four are incorporated by reference as if set forth fully herein.

56.

There exists no means of judicial review that comport with due process to challenge the arbitrary and capricious conduct of the City Council in failing to adhere to Section 2-402(a) of the City's Charter when considering and enacting Ord. 17-O-1420. Mandamus is therefore an appropriate remedy.

57.

Any discretion of the City Council to adhere to Section 2-402(a) of the City's Charter is not absolute, but is circumscribed by the statutes and Charter from which their authority derives.

58.

The City Council, as presided over by Moore, had an official duty to abide by and follow Section 2-402(a) of the City's Charter, which requires that proposed legislation be read by title in full in two separate regular meetings of the City Council when passing Ord. 17-O-1420. The City Council failed to fulfill that duty.

59.

Members of the public, including DCSD, have a clear legal right to "to adequately review and understand the intent and effect of the legislation." Section 2-402(a).

60.

Petitioner is seeking a writ of mandamus to issue to compel Moore to declare Ord. 17-O-1420 void and to follow the procedural strictures of the City Charter prior to any reenactment of legislation for the Emory Annexation.

Wherefore, Petitioner demands judgment as follows:

- 1) that process issue as provided by law;
- 2) that the Court order a trial by jury as to all issues so triable;
- 3) that the Court enter temporary, preliminary and permanent injunctive relief barring Respondents from enforcing the provisions of Ord. 17-O-1420

requiring that public school eligible students living within the Emory Annexation enroll in the APS school on or before July 1, 2018;

- 4) that the Court settle the actual and justiciable controversy between the parties and enter a declaratory judgment to the effect that Ord. 17-O-1420 is null and void as a matter of law pursuant to O.C.G.A. § 36-35-3(a);
- 5) that the Court issue a writ of mandamus requiring the City to declare Ord. 17-O-1420 void and to follow the procedural strictures of the City Charter prior to any reenactment of legislation for the Emory Annexation;
- 6) That the Court award Petitioner an award of costs and expenses of litigation, including reasonable attorney's fees; and
- 7) That the Court grant Petitioner such other and further relief as the Court deems appropriate.

Respectfully submitted, this _____ day of June 2018.

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