

[Cite as *State ex rel. Yost v. Buechel*, 2004-Ohio-2828.]

COURT OF APPEALS  
DELAWARE COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO, EX REL.,	:	JUDGES:
DAVID A. YOST	:	Hon. William B. Hoffman, P.J.
	:	Hon. Sheila G. Farmer, J.
Plaintiff-Relator/Appellant	:	Hon. John F. Boggins, J.
	:	
vs.	:	
	:	Case No. 03CAH12071
GARY A. BUECHEL, ET AL.	:	
	:	
Defendants-Respondents/ Appellees	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Court of Comon Pleas,  
Case No. 03CVH12933

JUDGMENT: Dismissed

DATE OF JUDGMENT ENTRY: June 1, 2004

APPEARANCES:

For Plaintiff-Relator/Appellant

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For John Schiller

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For Defendants-Respondents/Appellees

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*Farmer, J.*

{¶1} On December 16, 2003, appellant, the State of Ohio, filed a complaint for preliminary and permanent injunctive relief against appellees, members of the Buckeye Valley Local School District Board of Education. Appellant sought to enjoin the Board from appointing a superintendent to the Buckeye Valley Local School District and entering into a related employment contract prior to January 1, 2004. A hearing was held on December 18, 2003. By decision and judgment entry filed same date, the trial court denied the injunction.

{¶2} Appellant filed an appeal and an application for injunction pending appeal. By judgment entry filed December 19, 2003, this court granted the application and temporarily enjoined the Board from appointing a superintendent. On December 24, 2003, this court lifted the temporary injunction and denied the application.

{¶3} On December 26, 2003, the Board appointed John Schiller as superintendent and entered into a related employment contract.

{¶4} Appellant filed an appeal and this matter is now before this court for consideration. Assignments of error are as follows:

{¶5} "THE TRIAL COURT ERRED IN HOLDING THAT THE RELATOR DID NOT HAVE STANDING PURSUANT TO SECTION 309.12 OF THE OHIO REVISED CODE TO BRING THE APPELLANT'S ACTION IN THE TRIAL COURT."

II

{¶6} "THE TRIAL COURT ERRED IN FAILING TO ENJOIN THE APPELLEES FROM APPOINTING JOHN SCHILLER TO THE POSITION OF SUPERINTENDENT OF THE BUCKEYE VALLEY LOCAL SCHOOL DISTRICT, AND ENTERING INTO A RELATED EMPLOYMENT CONTRACT WITH SCHILLER, PRIOR TO JANUARY 1, 2004."

II

{¶7} We will address this assignment of error first as we find it to be dispositive of the appeal.

{¶8} Appellant claims the trial court erred in denying a preliminary and permanent injunction to enjoin the Board from appointing John Schiller as superintendent and entering into a related employment contract. For the following reasons, we find this appeal to be moot given the actions of the Board.

{¶9} By its very nature, an injunction is a legal action which seeks to restrain an act (R.C. 2727.02). The complaint filed December 16, 2003 sought "a preliminary injunction and permanent injunction.restraining defendants from completing an illegal

contract by making an appointment to the office of Superintendent prior to January 1, 2004, and such other relief as this honorable Court shall deem proper and equitable." The trial court denied the issuance of an injunction on December 18, 2003, and this court granted a temporary injunction on December 19, 2003. This injunction was lifted on December 24, 2003.

{¶10} As is agreed to by the parties and is included in the statement of the case by appellant, the Board appointed John Schiller as superintendent and entered into a related employment contract on December 26, 2003. Therefore, the action sought to be restrained is a "fait accompli" and there is nothing for this court to restrain or enjoin. The issue of the present legality of the Schiller appointment and contract of employment is pending in the trial court.

{¶11} Based upon the fact situation presented, we find the action of the Board has rendered the issue in question moot. Any opinion on the legality of the Board's action would be solely advisory. We are not required to render an advisory opinion on a moot question. *State v. Bistricky* (1990), 66 Ohio App.3d 395. This court has made clear its reluctance to engage in the issuance of advisory opinions. See *State v. Brown* (January 24, 2000), Stark App. No. 1999CA00188.

{¶12} We find the issue to be moot and not justiciable despite appellant's argument that this case strikes "at the essence of democracy."

{¶13} The appeal is dismissed.

By Farmer, J.

Hoffman, P.J. and

Boggins, J. concur.

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JUDGES

SGF/jp 0518

