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Attorney for Plaintiff

AUG -4 2006  
BY CERTIFIED MAIL

IN THE DISTRICT COURT OF BUTLER COUNTY, KANSAS  
Division \_\_\_\_\_

*The Topeka Capital-Journal* )  
A division of Morris Publishing Group, LLC )  
Plaintiff, )  
 )  
v. )  
 )  
SCHOOLS FOR FAIR FUNDING, INC., )  
Defendant. )

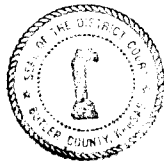
Case No. 2006 CV 364

SUMMONS

TO: Defendant Schools For Fair Funding, Inc.

You are hereby summoned and required to serve upon Michael W. Merriam, the Plaintiff's attorney, whose address is 700 SW Jackson, Roof Garden Suite, Topeka, Kansas 66603, a pleading to the Petition which is herewith served upon you, within 20 days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Petition. Your pleading must also be filed with the Court. As provided in subsection (a) of K.S.A. 60-213, and amendments thereto, your Answer must state as a counterclaim any related claim which you have against the Plaintiff, or you will thereafter be barred from making such claim in any other action.

JUL 28 2006



  
Clerk of the District Court

[Seal of the Court]

FILED  
BUTLER COUNTY  
DISTRICT COURT

'06 JUL 28 P12:43

IN THE DISTRICT COURT OF BUTLER COUNTY, KANSAS  
Division \_\_\_\_\_

CLERK OF DISTRICT COURT  
BY \_\_\_\_\_

*The Topeka Capital-Journal*  
A division of Morris Publishing Group, LLC  
Plaintiff,

v.

Case No. **2006 CV 364**

SCHOOLS FOR FAIR FUNDING, INC.,  
Defendant.

**PETITION**  
**(Pursuant to K.S.A. Chapter 60)**

COMES NOW, the plaintiff, *The Topeka Capital-Journal*, a division of Morris Publishing Group, LLC, by and through its attorney, Michael W. Merriam, and for its cause of action against the defendant alleges and states as follows:

1. *The Topeka Capital-Journal* is engaged in the business of publishing a daily newspaper of general circulation in the State of Kansas, and in the course of such business, gathers and disseminates news to the public. Its business in news gathering is conducted through its reporters and editorial staff and consists in part of reviewing and obtaining information from public records.

2. Defendant is a corporation whose Resident Agent is Schools for Fair Funding, Inc. and may be served with legal process at its Registered Office, 110 East Broadway, Newton, KS 67114. The public records which are the subject of this action are located in Butler County, Kansas.

3. On February 26, 2006, through counsel, plaintiff forwarded a request under the Kansas Open Records Act, K.S.A. 45-215 *et seq.* (herein sometimes referred to as “KORA”) to defendant, requesting “access to and copies of public records in your possession comprised of all Schools for Fair Funding, Inc. budget records; records of revenues and expenses; all organizational documents, including pre-incorporation meeting minutes or correspondence, articles of incorporation, bylaws, and minutes and agenda of meetings; membership or ownership records including membership certificates, stockholder records or similar documents; and tax returns and tax exemption recognition letters, if any.”

4. By letter dated March 7, 2006, through counsel, defendant denied plaintiff’s request and asserted that it was not a public agency within the meaning of K.S.A. 45-217(f)(1) because it claims to be exempt under K.S.A. 45-217(f)(2). It claims that it receives payment from public funds solely for services it renders to public agencies. This denial of access also asserted that defendant would make available only “records documenting its *receipt* of public funds which have been received since on or after January 1, 2006 [sic].” [Emphasis added]. The latter statement was made pursuant to K.S.A. 45-240, although defendant specifically refused to comply with that part of the statute which requires that such not-for-profit entity “shall be required to document the receipt and *expenditure* of such funds.” [Emphasis added].

5. Defendant was organized and incorporated on September 29, 1997 by government action through representatives of seven unified school districts in the State of Kansas, all of which are public agencies within the meaning of K.S.A. 45-217(f)(1) and subject to all provisions of the KORA. The authority for its existence is derived from that same government action of the member school districts. Its directors were the same school district representatives and it remains fully

controlled by the member school districts. Its stated corporate purpose is “to further school legislation.” Defendant was incorporated as a result of official action by a number of school districts in the State of Kansas, using taxpayer money to do so, and continues to be supported wholly by taxpayer funds. The purposes of the organization were generally to further the public interests and purposes of the member school districts in litigation and legislation connected with the core governmental function of school finance. Defendant is a public agency within the meaning of K.S.A. 45-217(e)(1) because it is an agency, instrumentality, or other entity receiving or expending and supported in whole or in part by the tax derived funds of state school districts, its activities are controlled by the schools districts which organized it, and it is performing functions that the school districts themselves would otherwise be doing. Defendant is merely the alter ego of its constituent school district members which are themselves public agencies under KORA. Defendant was incorporated by the member public agencies intentionally for the purpose of avoiding the light of public scrutiny that would otherwise be required under KORA. It is an attempt by the public agency members to do indirectly what the legislature has forbidden by KORA.

6. Defendant's action in refusing to allow access to the records, ostensibly by reliance upon the assertion that it is not subject to the KORA because it is not a public agency under K.S.A. 45-217(f)(1), is in violation of K.S.A. 45-218(a) which provides that all public records shall be opened for inspection. Defendant's conduct is willful and intentional and a deliberate effort to evade provisions of the Kansas Open Records Act by improper reliance upon a subterfuge to avoid the KORA by creation of a surrogate entity by the constituent School Boards to perform the government functions that the School Boards themselves would otherwise be doing directly, and in the course

of which, would be subject to KORA. Defendant has articulated no other reason for refusal to allow access under the Kansas Open Records Act.

7. The records in question are not excepted from disclosure under any provision of K.S.A. 45-221. Defendant has violated the provisions of the Kansas Open Records Act, K.S.A. 45-215 *et seq.*, and is subject to appropriate orders of mandamus or injunction and declaratory judgment to enforce the purposes of the act under K.S.A. 45-222. Defendant's actions as above related were not in good faith, as they are without any reasonable basis of fact or law, and defendant has cited no provision of the Kansas Open Records Act, common law, or other provision, which are legally sufficient to support its actions.

8. K.S.A. 45-240 does not apply to defendant because defendant is a public agency or the alter ego of a public agency and therefore subject to K.S.A. 45-218 and all other provisions of KORA. In the alternative, if K.S.A. 45-240 does apply to defendant, defendant should be required to provide access to documents of both receipts and expenditures of funds. In this event, defendant cannot demand payment of costs for legal review of such records.

9. By reason of defendant's violation of the Kansas Open Records Act in failing to provide access to public records, and in failing to comply with K.S.A. 45-218, together with the intentional nature of the actions of the government agencies which incorporated and created defendant in order to avoid the KORA, plaintiff should be awarded its attorney's fees pursuant to K.S.A. 45-222(c).

WHEREFORE, plaintiff prays for judgment against the defendant for violation of the Kansas Open Records Act, K.S.A. 45-215 *et seq.* for

I. A declaratory judgment 1) that defendant's actions were contrary to law and in violation of the Kansas Open Records Act; 2) that defendant is a public agency within the meaning of K.S.A. 45-217(f)(1); 3) that the records plaintiff seeks are public records; 4) that defendant must provide access to and copies of any and all such records pursuant to K.S.A. 45-218; 5) that K.S.A. 45-240 does not apply to defendant, or in the alternative, if it does apply, that defendant must provide access to documents of both the receipt and expenditure of public funds received, and that it cannot demand payment of its costs for legal review of such documents;

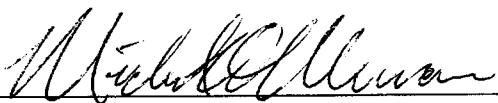
II. An order enjoining defendant from any further violations of the Kansas Open Records Act;

III. An order in mandamus compelling defendant to comply with the law and plaintiff's request for access to public records now and in the future;

IV. Plaintiff's attorney's fees under K.S.A. 45-222(c);

V. Plaintiff's costs and such other and further relief as may seem just and equitable.

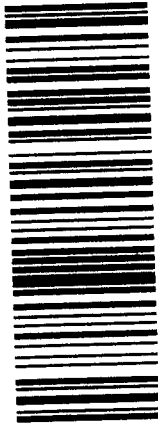
Respectfully submitted,



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Attorney for *The Topeka Capital-Journal*

**CERTIFIED MAIL™**

*Butler County Sheriff's Office*  
SHERIFF CRAIG D. MURPHY  
141 South Gordy  
El Dorado, Kansas 67042



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MAILED *AK*  
1ST NOTICE *8/3/16*  
2ND NOTICE  
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*1/14/15*

**RETURN RECEIPT  
REQUESTED**

RESIDENT AGENT/SCHOOLS FOR FAIR FUNDING INC.  
110 E BROADWAY  
NEWTON, KS 67114

67114+2222 01

