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File No. 2773500-0002

December 10, 2021

VIA E-MAIL

Eric Schmitt
Office of the Attorney General
207 W. High Street
P.O. Box 899
Jefferson City, MO 65102

Re: Lee's Summit R-7 School District – Litigation Hold Included

Dear Mr. Schmitt:

We are legal counsel for the Lee's Summit R-7 School District. This responds to your December 9 letter to Dr. David Buck. You are to direct all further communications on this matter to me.

Response to "Cease and Desist" Demand

The District's Board of Education is committed first and foremost to the health and safety of its staff and students. Every COVID mitigation effort the District has undertaken has been guided by science, and has been aimed at ensuring that students can, to the greatest extent possible, receive in-person instruction. The Board is equally committed to standing up for its teachers, principals, and support staff against baseless attacks on the Board's legal authority to act in accordance with Missouri law in protecting them against a disease that has killed over 15,000 Missourians. The Board will continually evaluate its response to the COVID pandemic based on available and reliable data. The Board also shares your stated objective of supporting parental involvement in their children's education—it just recognizes its responsibility to represent a wider range of voices than those you are publicizing.

While the District acknowledges that people have certain rights, it teaches its students the fundamental notion that rights must be balanced against the obligation to exercise them responsibly, and in a manner that does not violate the rights of others. Your invocation of "rights" untethered to an obligation to exercise them responsibly invites lawlessness. This is especially pernicious coming from your office, because of the outsized weight some may attach to your opinions. But as Missouri's courts have repeatedly said, the opinions of the Attorney General have no binding authority. *Smith v. Sheriff*, 982 S.W.2d 775, 779 (Mo. Ct. App. 1998). For the reasons I will now explain, your recent letters not only lack legal effect—they are simply wrong.

First, you have no legal authority to direct the District to cease and desist what it is doing to mitigate COVID. You cite no such authority in your letter, because there is none.

Second, you place great reliance on the recent decision from the Cole County Circuit Court in *Robinson v. Missouri Department of Health and Senior Services*. That decision is not binding on school districts—none of them are parties to the suit, nor are they in privity with a party to that suit. That decision is not even binding on other courts in the state. See *State ex rel. City of Crestwood v. Lohman*, 895 S.W.2d 22,

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29 (Mo. Ct. App. 1994) (Cole County Circuit Court erred in treating St. Louis County Circuit Court decision as binding precedent where State was not a party to the St. Louis County action).

Third, and more fundamentally, the authority of school districts to adopt COVID mitigation measures does not depend on any authority from DHSS or any local health department. So even if the *Robinson* decision were to be correct—something begging for an appellate court to determine—it is irrelevant. The Missouri Legislature has expressly granted local boards of education wide-ranging power to manage and govern their own affairs, power that you have no authority to interfere with.

For instance, RSMo. § 160.011 grants boards of education “general control of the property and affairs” of their school district. RSMo. § 162.261 and 162.471 give school boards “government and control of their districts. RSMo. § 171.011 authorizes school boards to make “all needful rules and regulations” for the government of their districts.

We don’t need to rely on just these general statutes to demonstrate the Attorney General’s lack of authority in this matter. Consider what the Legislature **has** authorized school districts to do in the face of a pandemic. Under RSMo. § 167.191:

It is unlawful for any child to attend any of the public schools of this state while afflicted with any contagious or infectious disease, or while liable to transmit such disease after having been exposed to it. For the purpose of determining the diseased condition, or the liability of transmitting the disease, the teacher or board of directors may require any child to be examined by a physician, and exclude the child from school so long as there is any liability of such disease being transmitted by the pupil.

This law speaks for itself. Not only may a school district exclude from school a child who has COVID; it may exclude from school a child who has been exposed to COVID and who is liable to transmit it pending a medical test or examination to confirm that the child is not afflicted with the disease.

In short, the duly elected Lee’s Summit R-7 Board of Education will not abandon its statutory duty to govern the operations of the school district. If you follow through on your threat to sue the District, we will defend that suit vigorously, and pursue all remedies available to the District resulting from any suit that violates Missouri Supreme Court Rule 55.03, which requires among other things that any claim “is not presented or maintained for any improper purpose” and that the claim “is warranted by existing law.”

Sunshine Law Request

Your letter purported to include a Sunshine Law request. However, it was not directed to the District’s designated custodian of records, and is therefore invalid. Nonetheless, as a matter of grace, we will respond to it next week, within the time required by Missouri law.

Litigation Hold

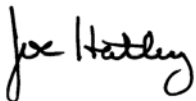
You are placed on notice that you are to preserve the following records given your threat of litigation:

- All records relating to your office’s refusal to appeal the decision in *Robinson v. DHSS*

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- All drafts of, and internal communications regarding, the letter you sent on December 7, 2021 to Missouri school districts and public health officials
- All drafts of, and internal communications regarding, any “cease and desist” letters you sent to any Missouri school district or public health officials such as the one you sent the District on December 9
- All records of communication with any other public official (elected or appointed) relating to whether your office would or should appeal the decision in *Robinson v. DHSS*
- All records reflecting any legal research undertaken by you or any employee in your office regarding whether you had the authority to issue your December 7 and December 9 letters as described above, and whether you have the authority to in fact take legal action against school districts who refused to comply with your December 7 and 9 letters
- All communications received in your office in response to your December 7 letter as described above, including all emails sent to or received by illegalmandates@ago.mo.gov.
- All internal communications reflecting or relating to concerns that you are threatening or pursuing litigation against school districts that may lack a legal basis

Sincerely,



W. Joseph Hatley