



KeyCite Red Flag - Severe Negative Treatment
Opinion Vacated on Rehearing by [U.S. v. State of Miss.](#), 5th Cir.(Miss.),
August 23, 1974

476 F.2d 941
United States Court of Appeals,
Fifth Circuit.

UNITED STATES of America, Plaintiff-Appellee,
v.
STATE OF MISSISSIPPI et al. (Smith County
School District), Defendants-Appellants,
Sylvarena Baptist Academy, Defendant-Appellant.

No. 72-2521.
|
April 11, 1973.

Synopsis

The United States District Court for the Southern District of Mississippi, at Jackson, Dan M. Russell, Jr., Chief Judge, entered judgment granting supplemental relief in school segregation claim and an appeal was taken. The Court of Appeals held that where county board of supervisors leased former public school to civic center for a nominal sum and civic center in turn subleased premises to be used as a private segregated school serving only white students, federal district court was directed to enter order upholding lease and sublease but enjoining civic center as subtenant or any members, successors or assigns from using property for operation of a segregated private school.

Remanded with directions.

Attorneys and Law Firms

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Marvin Oates, Bay Springs, Miss., M. M. Roberts, Hattiesburg, Miss., for Sylvarena Baptist Academy.

L. D. Pittman, Raleigh, Miss., for School Board.

Robert E. Hauberg, U. S. Atty., Jackson, Miss., Daniel F. Rinzel, Richard H. Swan, Andrew J. Ruzicho, Civil Rights Div., Dept. of Justice, Washington, D. C., for

plaintiff-appellee.

Before COLEMAN and SIMPSON, Circuit Judges and ESTES, District Judge.

Opinion

*942 PER CURIAM:

In 1968, the Board of Supervisors of Smith County, Mississippi, leased for a 25-year period the Sylvarena School, a vacant public school building located on certain sixteenth section lands,¹ to the Sylvarena Civic Center Association for the sum of \$5.00 per year. On August 11, 1970, some seventeen months after the original lease, the district court ordered the Smith County Board of Education to terminate operation of a racially dual system of public schools. Some five months later, on January 15, 1971, the Sylvarena Civic Center Association subleased the Sylvarena School premises to the Sylvarena Baptist Academy for the unexpired term of the Civic Center's lease to be used as a private, segregated school serving only white students. The sublease provides that the yearly rentals of \$5.00 be paid directly to the County Superintendent of Education. The United States moved for supplemental relief in the district court, which had retained jurisdiction of the cause to insure compliance, on the basis that the leases were being used to reestablish a dual school system by unlawfully providing state financial assistance to the operation of the private, segregated school. The district court granted the United States the relief sought, enjoining the selling, leasing or subleasing of sixteenth section land to any organization for use as a segregated private school, and declaring the original lease of the Sylvarena School premises to the Civic Center null and void. The court held that the Smith County Board of Supervisors had the right to renew the lease to the Civic Center provided that any lease contain the provision that any sixteenth section land premises may not be leased or subleased for the use of a segregated school or for any use which interferes with any school desegregation plan. We hold this order of the district court overbroad and modify it in accord with [McNeal v. Tate County School District](#), 460 F.2d 568, 574 (5th Cir. 1972).

Although under Mississippi law the Smith County Board of Supervisors is entitled to lease sixteenth section land for a nominal sum, it is well established that the state, acting through its various local bodies, is charged with the

affirmative duty to take whatever steps might be necessary to bring about a unitary educational system free of racial discrimination. [Green v. County School Board of New Kent County](#), 391 U.S. 430, 88 S.Ct. 1689, 20 L.Ed.2d 716 (1968); [McNeal v. Tate County School District](#), 460 F.2d 568 (5th Cir. 1972); [Gilmore v. City of Montgomery](#), 473 F. 2d 832 (5th Cir. 1973). Where, as here, the state is the lessor of a former public school converted into a segregated private school, located on property specifically designated for the benefit of the public schools, there is a state involvement with such schools. Under these circumstances the proscriptions of the Fourteenth Amendment against racial discrimination by the state must be complied with by the lessee and sublessee as certainly as though they were binding covenants written into the agreement itself. See [Burton v. Wilmington Parking Authority](#), 365 U.S. 715, 81 S.Ct. 856, 6 L.Ed.2d 45 (1961).

At the time the district court granted the relief requested by the United States by voiding the lease between the Board of Supervisors and the Civic Center, it did not have the benefit of this court's decision on petition for

Footnotes

- 1 Legal title to the sixteenth section of each township is vested in the State of Mississippi to be held in trust for the maintenance and support of public schools for inhabitants of each township. [Lambert v. State](#), 211 Miss. 129, 51 So.2d 201 (1951). Though title remains in the state, the Mississippi legislature has provided that each county shall control all the sixteenth section land located within it. Miss.Code Ann. § 6598-01 (Supp. 1972).

rehearing in [McNeal v. Tate County School District](#), *supra*, 460 F.2d at 574.

In light of our decision on reconsideration in *McNeal*, we now vacate the order of the district court voiding the *943 lease between the Board of Supervisors and the Civic Center, and remand the case with directions to enter an order upholding the lease and sublease but enjoining the Civic Center and the Sylvarena Baptist Academy, or any members, successors or assigns from using the property for the operation of a segregated private school. The injunction of the district court shall provide that if the Sylvarena School is used as a private school, such school shall be operated without any discrimination of any kind or character based upon race, creed, color or national origin, and the doors of any such school shall be open at all times to all qualified applicants on an equal basis.

Remanded, with directions.

All Citations

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