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6 *Attorneys for Maricopa County Community College District Board*

7 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
8 IN AND FOR THE COUNTY OF MARICOPA

9 STATE OF ARIZONA ex rel. Attorney) No. CV2013-009093
General Thomas C. Horne,)
10)
Plaintiff,) **DEFENDANT’S MOTION FOR**
11) **JUDGMENT ON THE PLEADINGS**
vs.)
12)
MARICOPA COUNTY COMMUNITY) (Assigned to the Hon. Arthur Anderson)
13 COLLEGE DISTRICT BOARD,)
14)
Defendant.)
15)

16 Defendant Maricopa County Community College District Board (“MCCCD”) moves
17 for judgment on the pleadings pursuant to Rule 12(c) of the Arizona Rules of Civil Procedure.
18 The Attorney General’s authority to bring an action on behalf of the State is prescribed by
19 statute. Because there is no statutory basis for this lawsuit, he has exceeded his powers and
20 duties in filing the lawsuit, and it must be dismissed.

21 **Factual Background**

22 In June 2012, the Secretary of the United States Department of Homeland Security
23 announced a deferred action program for certain young people who were brought to this
24 country as children. Those who qualify for the Deferred Action for Childhood Arrivals
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26

1 (“DACA”) program may remain in the United States for two years and obtain employment
2 authorization documents. The period of deferred action is subject to renewal.

3 At the heart of the dispute between the Attorney General and MCCCDC is whether
4 DACA participants may present employment authorization documents as evidence of eligibility
5 for in-state tuition. In compliance with A.R.S. § 1-502 and consistent with its practice,
6 MCCCDC believes that work authorizations issued to DACA participants are evidence that the
7 student is qualified to be considered for in-state tuition rates. The Attorney General, however,
8 has filed suit against MCCCDC seeking a judicial declaration that A.R.S. §§ 15-1803(B) and 15-
9 1825(A) prohibit MCCCDC from granting DACA participants in-state tuition rates.

10 Prior to filing this lawsuit, counsel for the Attorney General’s Office and MCCCDC
11 exchanged several letters in an attempt to resolve the matter without litigation. In those
12 discussions, MCCCDC offered to work cooperatively with the Attorney General’s Office to
13 bring a declaratory action to seek clarity on the matter. As part of its offer, MCCCDC indicated
14 that it would waive any defenses regarding the Attorney General’s authority to file the lawsuit.
15 The Attorney General’s Office rejected that offer and filed this lawsuit.

16 Argument

17 **I. The Attorney General may bring an action on behalf of the State only when** 18 **authorized to do so by a specific statutory grant of power.**

19 The Attorney General does not have carte blanche to bring actions on behalf of the State
20 without specific statutory authority. “In Arizona, the Attorney General has no common law
21 powers; whatever powers he possesses must be found in the Arizona Constitution or the
22 Arizona statutes.” *State v. Block*, 189 Ariz. 269, 272, 942 P.2d 428, 431 (1997) (internal
23 quotation marks and citation omitted); *see also Ariz. State Land Dep’t v. McFate*, 87 Ariz. 139,
24 142, 348 P.2d 912, 914 (1960) (same). Because the Arizona Constitution does not itself grant
25 the Attorney General any powers or duties, *see Ariz. Const. art. V, § 9*, his “[s]tanding [to bring
26 a lawsuit] must be linked to some statutory basis.” *Block*, 189 Ariz. at 273, 942 P.2d at 432.

1 **II. There is no statutory authority for this lawsuit.**

2 The Attorney General has cited no provision from the education title or elsewhere that
3 provides him authority to initiate this action on behalf of the State of Arizona, instead asserting
4 only that his enforcement power arises from his general powers and duties set forth in A.R.S.
5 §§ 41-192(A) and 41-193(A)(1)-(2). (Compl. ¶ 4.) Although he is correct that none of the
6 specific statutes at issue here – A.R.S. §§ 15-1803(B) & 1825(A) – provide him with the
7 needed authority to file this lawsuit, his reliance on his general enforcement powers fails.

8 **A. A.R.S. §§ 15-1803(B) & 1825(A) Do Not Authorize this Lawsuit.**

9 Neither Section § 15-1803(B) nor Section 15-1825(A) authorize the Attorney General
10 to enforce the statutes' requirements. Indeed, neither statute provides *any* specific penalty for a
11 violation. The “clear terms” that are needed to authorize the Attorney General to bring this
12 lawsuit on behalf of the State are absent from the statutes that form the basis for the lawsuit.
13 *See McFate*, 87 Ariz. at 146, 348 P.2d at 916 (noting that “where the legislature intended to
14 authorize the Attorney General to initiate proceedings, it has so provided in clear terms”); *cf.*
15 *Estate of McGill v. Albrecht*, 203 Ariz. 525, 531, 57 P.3d 384, 390 (Ariz. 2002) (“The
16 legislature surely knows how to require a showing of gross negligence, having used the term in
17 a great number of statutes.”).

18 **B. A.R.S. § 41-192(A) Does Not Authorize this Lawsuit.**

19 In his Complaint, the Attorney General relies specifically on A.R.S. § 41-192(A) for his
20 enforcement authority. (Compl. ¶ 4.) However, that statute merely indicates that the Attorney
21 General is the “chief legal officer” of the State and addresses his role as the legal advisor to
22 state agencies, establishing administrative and operational procedures for the Department of
23 Law, representing school districts in conflict of interest cases, anti-trust, restraint of trade and
24 price fixing cases, organizing the civil rights division, and publishing the agency handbook.
25 A.R.S. § 41-192(A). As the Supreme Court held in *McFate*, that provision does not provide the
26 Attorney General with the authority to initiate cases such as this one on the State’s behalf, not

1 on behalf of a state agency or officer. *McFate*, 87 Ariz. at 142-48, 348 P.2d at 914-18 (holding
2 that the Attorney General could not initiate an action on his own, as the “chief legal officer” of
3 the State, to enjoin the sale of land by the State Land Department).

4 **C. A.R.S. § 41-193(A)(1) & (2) Do Not Authorize This Lawsuit.**

5 The Complaint also cites A.R.S. § 41-193(A)(1) and (2) as authority for the lawsuit, but
6 again, neither of those statutes allow him to file enforcement proceedings in the circumstances
7 presented here. (Compl. ¶ 4.)

8 A.R.S. § 41-193(A)(1) authorizes the Attorney General to “[p]rosecute and defend in
9 the supreme court all proceedings in which the state or an officer thereof in his official capacity
10 is a party.” Because this case is not before the Supreme Court, that statutory basis for the
11 Attorney General’s authority is inapplicable.

12 A.R.S. § 41-193(A)(2) permits the Attorney General to “prosecute and defend any
13 proceeding in a state court other than the supreme court in which the state or an officer thereof
14 is a party or has an interest.” Arizona courts have long recognized that this section
15 presupposes a properly instituted proceeding in which the State has an “interest.” *McFate*, 87
16 Ariz. at 145, 348 P.2d at 916. As the *McFate* court noted, Section 41-193(A)(2) “does not
17 permit the Attorney General, *in the absence of specific statutory power*, to initiate an original
18 proceeding.” *Id.* (emphasis added).

19 In *McFate*, the Attorney General brought an action to enjoin the sale of land by the
20 State Land Department. *Id.* at 140-41, 348 P.2d at 912-13. The Attorney General raised
21 objections to the proposed sale, including that the parcels of land were not appraised at their
22 true value and that the State’s interests would be “prejudiced by the sale.” *Id.* The State Land
23 Department challenged the Attorney General’s standing. The Arizona Supreme Court,
24 examining the scope of the powers and duties of the Attorney General, held that there was no
25 specific statutory basis for the lawsuit. *Id.* at 148, 348 P.2d at 918. The Court found that the
26 Attorney General’s role as legal advisor did not grant him any special powers to initiate suits

1 and further found that the statutes relating to the State Land Department did not grant the
2 Attorney General the power to initiate legal proceedings on behalf of the State. *Id.* at 146, 348
3 P.2d at 917. The Court commended the Attorney General for his “vigilance and public
4 spiritedness,” but held that he had no statutory ground upon which to have instituted the
5 action.¹ *Id.* at 148, 348 P.2d at 918.

6 Simply put, the Attorney General does not have blanket statutory authority – a
7 recognizable “interest” – to enforce all state laws or oversee political subdivisions’ compliance
8 with all state law. *E.g., McFate*, 87 Ariz. at 144, 348 P.2d at 915. He must have specific
9 statutory authority to initiate a suit on behalf of the State. *Block*, 189 Ariz. at 273, 942 P.2d at
10 432. The rule is no different for declaratory judgment actions. *Cf. Yes on Prop 200 v.*
11 *Napolitano*, 215 Ariz. 458, 469 ¶ 33, 160 P.3d 1216, 1227 (App. 2007) (finding no standing for
12 Attorney General to be named a party and represent the State’s interest in a declaratory
13 judgment action because there was no statutory authority for his participation).²

14 **III. MCCCCD is an independent political subdivision responsible for implementing**
15 **policies in accordance with state law.**

16 As the Complaint recognizes, MCCCCD is a separate political subdivision of the State
17 that is governed by an elected governing board. (Compl. ¶ 3.) MCCCCD’s governing board is
18 specifically given the responsibility for setting tuition rates for its students. (*Id.*; A.R.S. § 15-
19 1445(A)(3).) It is also given the power to adopt policies to govern MCCCCD and its operations.
20 A.R.S. § 15-1445(A)(1). As an independent public body, MCCCCD’s governing board – not the
21 Attorney General – has the authority and responsibility to determine what the laws require of it.
22 The Attorney General lacks the authority to compel MCCCCD to exercise this responsibility in a

23 ¹ The Court held that “the Governor alone, and not the Attorney General, is responsible for the
24 supervision of the executive department and is obligated and empowered to protect the interests
25 of the people and the State by taking care that the laws are faithfully executed.” *McFate*, 87
26 Ariz. at 148, 348 P.2d at 918.

² Arizona’s statutes relating to immigration issues also provide no general authority for the
Attorney General to bring this case.

